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# Federal Register

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WHEN: Tuesday, June 12, 2007
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28354; Directorate Identifier 2006–NM–245–AD; Amendment 39–15086; AD 2007–12–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A340–211, –212, –311, and –312 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) that applies to certain Airbus Model A340–211, –212, –311, and –312 airplanes. The existing AD currently requires an initial rotating probe inspection and initial and repetitive ultrasonic inspections for discrepancies of the first fastener hole of the horizontal flange of the keel beam on previously modified airplanes, installation of new fasteners, and corrective action if necessary. This AD retains the actions required by the existing AD and adds new rotating probe inspections and a terminating action for the repetitive inspections of the existing AD. This AD results from a report that certain inspections, done before accomplishing the modification of the lower keel beam fitting and forward lower shell connection, revealed cracking that was outside the modification limits specified in the service bulletin; the cracking was repaired by installing a titanium doubler. We are issuing this AD to prevent discrepancies of the fastener holes of the horizontal flange of the keel beam, which could result in reduced structural integrity of the fuselage.

**DATES:** This AD becomes effective June 21, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 21, 2007.

On October 27, 2005 (70 FR 59233, October 12, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A340–57–4087, including Appendix 01, dated November 21, 2003.

We must receive comments on this AD by August 6, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On September 28, 2005, the FAA issued AD 2005–20–27, amendment 39–14324 (70 FR 59233, October 12, 2005). That AD applies to certain Airbus Model A340–211, –212, –311, and –312 airplanes. That AD requires an initial rotating probe inspection and initial and repetitive ultrasonic inspections for discrepancies of the first fastener hole of the horizontal flange of the keel beam on previously modified airplanes, installation of new fasteners, and corrective action if necessary. That AD resulted from a report that certain inspections done before accomplishing the modification of the lower keel beam fitting and forward lower shell connection revealed cracking that was outside the modification limits specified in the service bulletin; the cracking was repaired by installing a titanium doubler. The actions specified in that AD are intended to find and fix discrepancies of the fastener holes of the horizontal flange of the keel beam, which could result in reduced structural integrity of the fuselage.

### Actions Since AD Was Issued

Since we issued that AD, further manufacturer analysis of the keel beam/center wing box (CWB) interface determined that cold working of additional fastener holes and modifications of the CWB lower panel/keel beam interface was needed to adequately ensure structural integrity of the airplane. These modifications would provide terminating action for the repetitive inspections required by the existing AD.

### Relevant Service Information

Airbus has issued Service Bulletin A340–57–4099, dated March 27, 2006. The service bulletin describes procedures for disconnecting one fastener from the keel beam/bottom skin panel junction by reaming a hole in the keel beam and oversizing fastener 5 of the CWB lower panel, and for cold-working two adjacent fastener holes of the CWB lower panel to install interference fit fasteners. These modifications include rotating probe inspections, if applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

We have also reviewed Airbus Service Bulletin A340–57–4087, Revision 01, including Appendix 01, dated February 15, 2005. (Service Bulletin A340–57–4087, including Appendix 01, dated November 21, 2003, was cited as the appropriate source of service information in AD 2005–20–27.) Revision 01 is technically the same as the original issue; revisions were made only to the effectivity and certain descriptive paragraphs.

The European Aviation Safety Agency (EASA), which is the airworthiness authority for the European Union,

mandated the service information and issued airworthiness directive 2006–0314, dated October 13, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

**FAA's Determination and Requirements of This AD**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States. Therefore, we are issuing this AD to supersede AD 2005–20–27. This new AD retains the requirements of the existing AD. This AD also requires accomplishing the actions specified in Service Bulletin A340–57–4099, described previously, except as discussed under ''Difference Between AD and Service Bulletin A340–57–4099.''

**Difference Between AD and Service Bulletin A340–57–4099**

Service Bulletin A340–57–4099 specifies contacting the manufacturer for disposition of certain repair conditions; however, this AD would require the repair of those conditions to be accomplished per a method approved by either the FAA or the EASA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the EASA (or its delegated agent) would be acceptable for compliance with the requirements of paragraph (j) of this AD.

**Explanation of Change Made to Requirements of Existing AD**

Paragraph (h) of the existing AD specifies making repairs using a method approved by the FAA or the Direction Generale De L'Aviation Civile (DGAC) (or its delegated agent). The European Aviation Safety Agency (EASA) has assumed responsibility for the airplane models that would be subject to this AD. Therefore, we have revised paragraph (h) of this AD to specify making repairs using a method approved by either the FAA, the DGAC (or its delegated agent), or the EASA (or its delegated agent).

**Costs of Compliance**

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future. For any affected airplane imported and placed on the U.S. Register in the future, the estimated costs to accomplish the specified actions, at an average labor rate of $80 per work hour, are as follows:

For the actions required by AD 2005–20–27 and retained by this AD: It takes between 3 and 8 work hours per airplane for the initial inspections and about 2 work hours per airplane for each repetitive inspection. Parts cost $190 for each kit; two kits are required for installing the new fasteners. Based on these figures, the estimated cost of the initial actions is between $620 and $1,020 per airplane; and the estimated cost of the repeat inspection is $160 per airplane, per inspection cycle.

For the new actions required by this AD: It takes between 14 and 29 work hours per airplane to do the inspections and modifications. Parts cost between $1,250 and $1,680 per kit. Based on these figures, the estimated cost of these actions is between $2,370 and $4,000 per airplane.

**FAA's Determination of the Effective Date**

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

**Comments Invited**

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include ''Docket No. FAA–2007–28354; Directorate Identifier 2006–NM–245–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

**Examining the Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14324 (70 FR 59233, October 12, 2005) and adding the following new airworthiness directive (AD):

**2007–12–08 Airbus:** Amendment 39–15086. Docket No. FAA–2007–28354; Directorate Identifier 2006–NM–245–AD.

**Effective Date**

(a) This AD becomes effective June 21, 2007.

**Affected ADs**

(b) This AD supersedes AD 2005–20–27.

**Applicability**

(c) This AD applies to Airbus Model A340–211, –212, –311, and –312 airplanes, certificated in any category; serial numbers 0006, 0007 (right-hand side of the airplane only), 0008 (left-hand side only), 0013, 0020, 0024 (left-hand side only), 0027 through 0029 inclusive, 0031, 0033, 0035, 0038 through 0040 inclusive, 0043, 0047, 0049, and 0052.

**Unsafe Condition**

(d) This AD results from a report that certain inspections, done before accomplishing the modification of the lower keel beam fitting and forward lower shell connection, revealed cracking that was outside the modification limits specified in the service bulletin; the cracking was repaired by installing a titanium doubler. We are issuing this AD to prevent discrepancies of the fastener holes of the horizontal flange of the keel beam, which could result in reduced structural integrity of the fuselage.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Restatement of Requirements of AD 2005–20–27**

**Initial/Repetitive Nondestructive Test Inspections/Repair**

(f) Within 5,420 flight cycles or 26,200 flight hours after accomplishing Airbus Modification 43577, whichever is first: Perform an initial rotating probe inspection for discrepancies of the first fastener hole of the horizontal flange of the keel beam by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4087, dated November 21, 2003; or Revision 01, dated February 15, 2005. If no cracking is found, before further flight, inspect for correct fastener diameter tolerance; if the fastener diameter is out of tolerance, before further flight, ream to oversize the fastener holes and install oversize fasteners in accordance with the Accomplishment Instructions of the service bulletin. Accomplishing the modifications specified in paragraph (i) of this AD ends the requirement for these inspections.

(g) If no cracking is found during any inspection required by paragraph (f) of this AD: Within 1,480 flight cycles or 7,400 flight hours, whichever is first, after accomplishing the inspection, perform an initial ultrasonic inspection for discrepancies of the first fastener hole of the horizontal flange of the keel beam by doing all the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4087, dated November 21, 2003; or Revision 01, dated February 15, 2005. If no cracking is found, repeat the ultrasonic inspection thereafter at intervals not to exceed 1,480 flight cycles or 7,400 flight hours, whichever is first; until the modifications required by paragraph (i) of this AD are accomplished.

**Repair Per the FAA; the Direction Generale De L'Aviation Civile (DGAC); or the European Aviation Safety Agency (EASA)**

(h) If any cracking is found during any inspection required by this AD: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the DGAC (or its delegated agent); or the EASA (or its delegated agent). Within 1,480 flight cycles or 7,400 flight hours, whichever is first, after repair of any cracking, perform an ultrasonic inspection as required by paragraph (g) of this AD. Repeat the ultrasonic inspection thereafter at intervals not to exceed 1,480 flight cycles or 7,400 flight hours, whichever is first; until the actions required by paragraph (i) of this AD are accomplished.

**New Requirements of This AD**

**Modifications**

(i) Within 118 months after the effective date of this AD: Disconnect the keel beam from the center wing box panel at fastener hole 5, do applicable rotating probe inspections, and do cold work and install interference fit fasteners in two adjacent fastener holes of the center wing box panel; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340–57–4099, dated March 27, 2006, except as required by paragraph (j) of this AD. Accomplishing these actions terminates the inspection requirements of paragraphs (f), (g), and (h) of this AD.

**Repair**

(j) If any crack is found during any action required by paragraph (i) of this AD and Service Bulletin A340–57–4099 specifies to contact Airbus: Before further flight, repair per a method approved by the Manager, International Branch, ANM–116; the DGAC (or its delegated agent); or the EASA (or its delegated agent).

**No Reporting Required**

(k) Although Airbus Service Bulletin A340–57–4087, dated November 21, 2003; and Revision 01, dated February 15, 2005, specify submitting an inspection report to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(l)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Related Information**

(m) The European Aviation Safety Agency airworthiness directive 2006–0314, dated October 13, 2006, also addresses the subject of this AD.

**Material Incorporated by Reference**

(n) You must use Airbus Service Bulletin A340–57–4099, dated March 27, 2006; Airbus Service Bulletin A340–57–4087, including Appendix 01, dated November 21, 2003, and Airbus Service Bulletin A340–57–4087, Revision 01, excluding Appendix 01, dated February 15, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A340–57–4099,

dated March 27, 2006; and Airbus Service Bulletin A340–57–4087, Revision 01, excluding Appendix 01, dated February 15, 2005; in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On October 27, 2005 (70 FR 59233, October 12, 2005), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A340–57–4087, including Appendix 01, dated November 21, 2003.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on May 25, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–10754 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–25738; Directorate Identifier 2006–NE–27–AD; Amendment 39–15085; AD 2007–12–07]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company (GE) CF6–80C2B Series Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for GE CF6–80C2B series turbofan engines with electronic control units (ECUs), installed on Boeing 747 and 767 series airplanes. This AD requires installing software version 8.2.Q1 to the engine ECU, which increases the engine's margin to flameout. This AD results from reports of engine flameout events during flight, including reports of events where all engines simultaneously experienced a flameout or other adverse operation. Though the root cause investigation is not yet complete, we believe exposure to ice crystals during flight is associated with these flameout events. We are issuing this AD to provide increased margin to flameout, which will minimize the potential of an all-engine flameout event caused by ice accretion and shedding during flight.

**DATES:** This AD becomes effective July 11, 2007. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of July 11, 2007.

**ADDRESSES:** You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John Golinski, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *john.golinski@faa.gov*; telephone: (781) 238–7135, fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to GE CF6–80C2B series turbofan engines with ECUs, installed on Boeing 747 and 767 series airplanes. We published the proposed AD in the **Federal Register** on October 24, 2006 (71 FR 62215). That action proposed to require installing software version 8.2.Q1 to the engine ECU, which increases the engine's margin to flameout.

### Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

### Comment That Corrective Actions Should Be Expanded

One commenter, the Airline Pilots Association, International, states that the corrective action should be expanded in this AD to be fully effective. The commenter states that the prescribed modification addresses only the flameout and restart issues, while the problems of engine ice accretion and compressor blade damage due to ice shedding during operations, remain. The commenter states that, due to the severity of single- and dual-engine flameout events, the FAA and GE must examine the engine certification and operating envelope to determine the causes of ice accretions and compressor blade damage while operating in an ice crystal environment and continue to develop a more comprehensive solution.

We do not agree. This AD considers the ice accretion location, quantity, and the potential of compressor blade damage caused by impact with ice. Paragraph (f) of this AD states that these AD actions are interim actions due to the on-going investigation, and that we may take further rulemaking actions in the future based on the results of the investigation and field experience.

### Request To Eliminate Certain Wording

Japan Airlines International (JAL) requests that we eliminate ''at the next shop visit of the engine'' in the compliance section. Doing this would:

- Then allow operators to accomplish the retrofit program on Boeing 767 series airplanes more aggressively; and
- Would facilitate completing the program in the proposed 5-year compliance period, without causing aircraft on the ground (AOG) situations, due to a shortage of spare ECUs.

JAL is concerned that there might be a shortage of spare ECUs that could result in grounded aircraft. JAL provided information and data on their planned retrofit for their fleet of Boeing 767 and 747 series airplanes.

We partially agree. Eliminating the proposed wording would result in a less aggressive replacement program for the total population of engines. JAL did not provide any supporting data of how this change would result in a more aggressive compliance program for engines installed on the Boeing 767 airplanes. Our risk assessment indicates that the risk presented by this unsafe condition can be successfully managed within the current and expected parts availability. Therefore, we did not change the AD.

In reviewing JAL's comment, we noted that our intent could be clarified. We changed the AD to clarify that ECUs installed with previous versions of software can be installed on an engine for a period of time.

The added paragraph in the AD discusses two possible conditions: (1) Reverting to previous versions of

software in an ECU, and (2) versions of software installed in ECUs that are installed on an engine. Our risk assessment indicates this change to the AD is acceptable and manages the unsafe condition.

**Suggestion To Accelerate the Compliance Schedule**

One commenter, the National Transportation Safety Board, suggests that the compliance schedule be accelerated as the software upgrade program progresses.

We do not agree. Our risk assessment indicates that the compromise to safety that is the subject of this AD can be adequately managed within the compliance schedule this AD requires. However, as also noted, we may have other AD actions as we more fully investigate the events leading to the AD. We did not change the AD.

**AD Clarifications**

After we issued the proposed AD, our review indicated that we should clarify compliance and make the following other needed updates.

We added a paragraph to the AD compliance section to clarify our intent for this AD. That paragraph now states that after the effective date of this AD, once software version 8.2.Q1 is installed in an ECU, reverting to previous versions of ECU software in that ECU is prohibited.

We clarified the compliance paragraphs by separating the actions required for engines installed in Boeing 767 series airplanes from those installed in Boeing 747 series airplanes.

We found that we inadvertently described the inlet gearbox seal by brand name. We now identify this seal by its material name in this AD.

GE issued Service Bulletin No. CF6–80C2 S/B 73–0339, Revision 1, which includes changes in the compliance section that make it consistent with this AD. We now reference that Service Bulletin Revision 1 in this AD.

We eliminated the paragraph that stated that installation of later FAA-approved ECU software versions are an acceptable alternative methods of compliance (AMOC) to this AD. We will approve future software versions as an AMOC to this AD using the standard AMOC process. Eliminating this paragraph minimizes possible confusion of using the process for requesting and approving AMOCs.

**Conclusion**

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously.

**Costs of Compliance**

We estimate that this AD will affect 293 CF6–80C2B series turbofan engines with ECUs installed on Boeing 747 and 767 series airplanes of U.S. registry. It will take about six work-hours per engine to perform the actions (ECU overhauls not included) and the average labor rate is $80 per work-hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $283,740.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**2007–12–07 General Electric Company:** Amendment 39–15085. Docket No. FAA–2006–25738; Directorate Identifier 2006–NE–27–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective July 11, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to General Electric Company (GE) CF6–80C2B1F, –80C2B2F, –80C2B4F, –80C2B5F, –80C2B6F, –80C2B6FA, –80C2B7F, and –80C2B8F turbofan engines with electronic control units (ECUs), installed on Boeing 747 and 767 series airplanes.

**Unsafe Condition**

(d) This AD results from reports of engine flameout events during flight, including reports of events where all engines simultaneously experienced a flameout or other adverse operation. We are issuing this AD to provide increased margin to flameout, which will minimize the potential of an all-engine flameout event caused by ice accretion and shedding during flight. Exposure to ice crystals during flight is believed to be associated with these flameout events.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Interim Action**

(f) These actions are interim actions due to the on-going investigation, and we may take further rulemaking actions in the future based on the results of the investigation and field experience.

**Engine ECU Software Installation for Boeing 767 Series Airplanes**

(g) For Boeing 767 series airplanes:

(1) All affected engines must have ECU software version 8.2.Q1 installed at next engine shop visit or ECU shop visit, whichever occurs first, but no later than five years after the effective date of this AD.

(2) Within 24 months after the effective date of this AD, at least one of the airplane's affected engines must have ECU software version 8.2.Q1 installed.

(3) Do the software installations specified in paragraphs (g)(1) and (g)(2) of this AD using paragraphs 3.A. through 3.B.(3)(f)4. of the Accomplishment Instructions of GE Service Bulletin No. CF6–80C2 S/B 73–0339, Revision 1, dated April 24, 2007.

**Engine ECU Software Installation for Boeing 747 Series Airplanes**

(h) For Boeing 747 series airplanes:

(1) All affected engines must have ECU software version 8.2.Q1 installed at next engine shop visit or ECU shop visit, whichever occurs first, but no later than five years after the effective date of this AD.

(2) Do the software installations specified in paragraph (h)(1) of this AD using paragraphs 3.A. through 3.B.(3)(f)4. of the Accomplishment Instructions of GE Service Bulletin No. CF6–80C2 S/B 73–0339, Revision 1, dated April 24, 2007.

**Reverting to Previous Software Versions of ECU Software**

(i) After the effective date of this AD:

(1) Once software version 8.2.Q1 is installed in an ECU, reverting to previous versions of ECU software in that ECU is prohibited.

(2) For a period of 24 months after the effective date of this AD, once an ECU containing software version 8.2.Q1 is installed on an engine, that ECU can be replaced with an ECU containing a previous software version. The calendar time requirements in paragraphs (g) and (h) of this AD are not to be exceeded.

(3) After 24 months from the effective date of this AD, once an ECU containing software version 8.2.Q1 is installed on an engine, if the ECU needs to be replaced for any reason, it must only be replaced by another ECU containing version 8.2.Q1 software.

**Definitions**

(j) For the purposes of this AD:

(1) Next shop visit of the engine ECU is when the ECU is removed from the engine for overhaul or for maintenance.

(2) Next shop visit of the engine is when the engine is removed from the airplane for maintenance in which a major engine flange is disassembled after the effective date of this AD. The following engine maintenance actions, either separately or in combination with each other, are not considered a next engine shop visit:

(i) Removal of the upper high pressure compressor (HPC) stator case solely for airfoil maintenance.

(ii) Module-level inspection of the HPC rotor stages 3–9 spool.

(iii) Replacement of stage 5 HPC variable stator vane bushings or lever arms.

(iv) Removal of the accessory gearbox.

(v) Replacement of the inlet gearbox polytetrafluoroethylene seal.

**Alternative Methods of Compliance**

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Special Flight Permits**

(l) Under 14 CFR part 39.23, special flight permits are prohibited.

**Material Incorporated by Reference**

(m) You must use General Electric Company Service Bulletin No. CF6–80C2 S/B 73–0339, Revision 1, dated April 24, 2007, to perform the installation required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on May 30, 2007.

**Robert Ganley,**

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. E7–10745 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HOMELAND SECURITY

## U.S. Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 12

**[CBP Dec. 07–27]**

**RIN 1505–AB79**

## Extension of Import Restrictions Imposed on Archaeological and Ethnological Materials From Peru

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends U.S. Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on archaeological material and certain ethnological materials originating in Peru which were imposed by Treasury Decision (T.D.) 97–50 and extended by T.D. 02–30. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, the restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to indicate this second extension. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. T.D. 97–50 contains the Designated List of archaeological and ethnological materials that describes the articles to which the restrictions apply.

**DATES:** *Effective Date:* June 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George F. McCray, Esq., Chief, Intellectual Property Rights and Restricted Merchandise Branch, (202) 572–8710. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344–1684.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Peru on June 9, 1997, concerning the imposition of import restrictions on pre-Columbian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru. On June 11, 1997, the former United States Customs Service published T.D. 97–50 in the **Federal Register** (62 FR 31713), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions, and included a list designating the types of archaeological and ethnological materials covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still

pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

On June 6, 2002, the former United States Customs Service published T.D. 02–30 in the **Federal Register** (67 FR 38877), which amended 19 CFR 12.104g(a) to reflect the extension of these import restrictions for an additional period of five years until June 9, 2007.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Peru continues to be in jeopardy from pillage of archaeological and certain ethnological materials, made the necessary determination to extend the import restrictions for an additional five years on April 26, 2007. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions.

The Designated List of Archaeological and Ethnological Material from Peru covered by these import restrictions is set forth in T.D. 97–50. The Designated List and accompanying image database may also be found at the following internet Web site address: *http://exchanges.state.gov/culprop/pefact.html,* by clicking ''III. Categories of Artifacts Subject to Import Restriction'', and **Federal Register**. A complete list is published in the **Federal Register** notice of June 11, 1997.

It is noted that the materials identified in T.D. 97–50 as ''certain pre-Colombian archaeological materials of Peru dating to the Colonial period and certain Colonial ethnological material from Peru'' are referred to in the Determination to Extend as ''Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru.'' The materials identified in T.D. 97–50 and those identified in the Determination to Extend are the same.

The restrictions on the importation of these archaeological and ethnological materials from Peru are to continue in effect for an additional 5 years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

**Inapplicability of Notice and Delayed Effective Date**

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

**Executive Order 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

**Signing Authority**

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

**List of Subjects in 19 CFR Part 12**

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

**Amendment to CBP Regulations**

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

**§ 12.104g [Amended]**

■ 2. In § 12.104g(a), the table of the list of agreements imposing import restrictions on described articles of cultural property of State Parties is amended in the entry for Peru by removing the reference to ''T.D. 02–30'' and adding in its place ''CBP Dec. 07–27'' in the column headed ''Decision No.''.

Approved: June 1, 2007.

**Deborah J. Spero,**

*Acting Commissioner, U.S. Customs and Border Protection.*

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 07–2810 Filed 6–5–07; 8:45 am]

BILLING CODE 9111–14–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Spectinomycin Sulfate

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Div. of Pfizer, Inc. The supplemental NADA provides for revising nomenclature for two bovine respiratory pathogens on labeling for spectinomycin sulfate injectable solution.

**DATES:** This rule is effective June 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Pharmacia & Upjohn Co., a Div. of Pfizer, Inc., 235 E. 42d St., New York, NY 10017, filed a supplement to NADA 141–077 for ADSPEC (spectinomycin sulfate) Sterile Solution used for the treatment of bovine respiratory disease associated with several bacterial pathogens. The supplemental NADA provides for revising nomenclature for two bacterial pathogens on product labeling. The supplemental NADA is approved as of May 10, 2007, and the regulations in 21 CFR 522.2121 are amended to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

■ 2. Revise § 522.2121 to read as follows:

**§ 522.2121 Spectinomycin sulfate.**

(a) *Specifications.* Each milliliter of solution contains spectinomycin sulfate tetrahydrate equivalent to 100 milligrams (mg) spectinomycin.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.600 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount.* 10 to 15 mg per kilogram of body weight at 24-hour intervals for 3 to 5 consecutive days.

(2) *Indications for use.* For the treatment of bovine respiratory disease (pneumonia) associated with *Mannheimia haemolytica, Pasteurella multocida*, and *Histophilus somni.*

(3) *Limitations.* Do not slaughter within 11 days of last treatment. Do not use in female dairy cattle 20 months of age or older. Use in this class of cattle may cause residues in milk. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 24, 2007.

**Bernadette Dunham,**

*Deputy Director, Center for Veterinary Medicine.*

[FR Doc. E7–10801 Filed 6–5–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 511

**[BOP–1128]**

**RIN 1120–AB28**

## Searching and Detaining or Arresting Non-Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Bureau of Prisons (Bureau) finalizes regulations on searching and detaining or arresting non-inmates. This revision reorganizes current regulations and makes changes that subject non-inmates to pat searches, either as random searches or based upon reasonable suspicion, as a condition of entry to a Bureau facility.

**DATES:** This rule is effective July 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau finalizes regulations on searching and detaining or arresting non-inmates. A proposed rule on this subject was published in the **Federal Register** on January 31, 2006 (71 FR 5026). We received four comments during the comment period. One was supportive of the rule. We respond to issues raised by the other three commenters below.

*Comment: Bureau staff should receive equivalent testing/scanning as the regulation requires for visitors.* Two commenters expressed the opinion that Bureau staff should be subject to the same potential searches required for others seeking to enter Bureau facilities.

In fact, Bureau employees are subject to search using the same search devices, methods, and technology employed to search other non-inmates seeking to enter Bureau facilities. Current Bureau policy regarding searching non-inmates states that, in accord with Bureau standards of employee conduct, the Bureau retains the right to conduct searches of employees when such a search is believed necessary to ensure institution security and good order.

Also, at the beginning of their employment, every Bureau employee receives, and signs for, a copy of the Bureau's Program Statement on Standards of Employee Conduct and Responsibility. This policy, along with signs posted at the entrances to each Bureau facility, notifies employees that they may be subject to any of the types of searches described above.

Further, policy states that an employee's refusal to undergo a search (including test) procedure is a basis for disciplinary action, including removal. The range of disciplinary actions that might be taken against an employee determined to be using illegal drugs, or introducing drugs or other forms of contraband, includes dismissal and criminal prosecution.

*Comment: There are problems with the Bureau's use of ion spectrometers to perform searches.* Two commenters raised issues surrounding the Bureau's use of ion spectrometers. Essentially, both commenters raised issues regarding the accuracy of such devices with regard to detecting illegal substances.

*Bureau's response:* At the outset, we note that the use of an ion spectrometry device is not the sole method of searching non-inmates, and may not be applied to search all non-inmates entering Bureau facilities. As the regulation explains, many types of searches may be conducted, including electronic searches, visual searches, pat searches, and urine surveillance testing, all with the primary goal of ensuring the safety, security and good order of Bureau facilities by reducing the introduction of contraband.

Ion spectrometry technology is designed to detect the presence of microscopic traces of illegal drugs on non-inmates and their clothing and belongings. Beginning in 1997, the Bureau conducted extensive testing of ion spectrometry technology to scan non-inmates for drugs as they enter Bureau facilities. Based on the results of this program, the Bureau concluded that using ion spectrometry devices contributed to reducing the amount of contraband on Bureau grounds.

Ion spectrometry technology is grounded in the well-established scientific principles of mass spectrometry and gas chromatography. Ion spectrometry devices are a minimally invasive method for screening people, packages, and cargo for traces of illegal substances. Although capable of identifying trace illegal substances within approximately the 1–5 nanogram range (one nanogram equals one billionth of a gram), the Bureau's machines are calibrated to register positive readings only at levels greater than those which may be casually encountered, for example by handling contaminated currency, using a public telephone, or shaking hands. The manufacturer of the Bureau's ion spectrometry devices claims a less than 1% rate of false positive results.

We have found that delivery of illicit substances while visiting is a common method for such substances to be introduced into institutions. Such methods include non-inmates swallowing small balloons full of illicit substances before entering the facility, then excreting and delivering the contents once inside. When done by this method, the ion spectrometry device may indicate handling of the illicit substance, while a further visual search of the individual would fail to disclose

its presence. Even if not directly transferred to the inmate while visiting, illicit substances can be secreted within the institution for later retrieval by inmates or others.

With regard to non-inmates who test positive for the presence of illegal substances and are denied admission into a Bureau facility, under current policy on the ion spectrometry testing program, staff are required to give the non-inmate a written notice describing the reasons for denial of admission and the appeal process. All non-inmates may appeal denial of admission using the process set forth in the notice.

*Comment: Searches/random searches are intrusive and unfair.* Two commenters expressed similar sentiments regarding the general concept of searching non-inmates wishing to enter Bureau facilities. One commenter stated that searches were unfair, and therefore discriminatory against non-inmates. The other commenter indicated that random searches were intrusive for non-inmates, and expressed particular concern regarding children.

*Bureau's response:* First, we note that both commenters referred to random searches, and not searches based upon reasonable suspicion. Section 511.15(a)(1) requires that random searches be impartial and not discriminate among non-inmates on the basis of age, race, religion, national origin, or sex. Further, Bureau staff are held to the highest standards of professionalism and discretion when conducting searches. With regard to the commenter's concern regarding children, staff would exercise caution and compassion if it becomes necessary to search a child, to ensure that none of the child's rights are violated.

However, instituting procedures requiring searches of non-inmates seeking to enter Bureau facilities is a necessity, originating from the need to prevent the introduction of contraband. The possibility of being searched (and the obvious notices so stating) acts as a minimally invasive deterrent to non-inmates seeking to introduce contraband, without unnecessarily or extremely burdening staff resources.

Non-inmates are a significant source of contraband introduction into Bureau facilities. 18 U.S.C. 1791 prohibits providing an inmate a prohibited object in violation of a statute or rule issued under statute. Although other search methods, such as visual searches and electronic detection devices, enable us to search non-inmates before they enter Bureau facilities, a 2003 report by the Office of Inspector General found that non-inmates often found unique ways of introducing contraband that may have easily been detected or prevented by random pat searches of non-inmates entering Bureau facilities.

We therefore must tighten security measures by instituting a system of random pat searches of non-inmates entering Bureau facilities. This will serve the dual purpose of preventing the introduction of contraband by its detection, and deterring non-inmates who may attempt to introduce contraband. The Bureau's overriding need to prevent introduction of contraband and/or confiscate contraband necessitates searches.

In particular, random searches, (without reasonable suspicion) are permissible, especially if the non-inmate is given prior notice of the search, which therefore lowers the non-inmate's reasonable expectation of privacy when seeking entry to the prison facility, and consents to the search. *See Spear* v. *Sowders,* 71 F.3d 626 (6th Cir. 1995); *U.S.* v. *Johnson,* 27 F.3d 564 (unpublished) (4th Cir. 1994); *El* v. *Williams,* 1990 WL 65717 (unpublished) (E.D.Pa. 1990).

In addition, we note that the more detailed searches, such as visual searches of the person, would only be performed based on the Warden's reasonable suspicion, as noted in § 511.16(c)(1)(B). Random visual searches of the person are prohibited.

*Comment: It is not always possible to provide same-sex pat searches or visual searches, as indicated in the proposed rule.* One commenter was concerned that ''although common law enforcement practice is to provide for same sex searches, in some cases this is not possible * * * [Requiring same sex searches] places the public at risk and undermines the professionalism of the Bureau of Prisons.'' The commenter also expressed concern regarding situations where a staff member of the same sex cannot be located quickly enough to do a pat search or visual search, or when exigent circumstances necessitate searches by staff who are not the same sex as the non-inmate.

*Bureau's response:* We agree with the commenter, and therefore clarify that pat searches, visual searches, and urine surveillance testing will be conducted by staff members of the same sex as the non-inmate being searched whenever possible. This concept is carried forth from the previous rule, § 511.12(f), which states that ''[a] pat search, visual search, or urine surveillance test is to be conducted by a person of the same sex as the visitor.'' We further strengthen this provision by also requiring that pat searches, visual searches, and urine surveillance testing will only be conducted by staff members of the opposite sex in emergency situations with the Warden's authorization.

**Executive Order 12866**

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was reviewed by OMB.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility Act**

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

**Unfunded Mandates Reform Act of 1995**

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This regulation is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based

companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 28 CFR Part 511**

Prisoners.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we amend 28 CFR part 511 as follows.

**Subchapter A—General Management and Administration**

## PART 511—GENERAL MANAGEMENT POLICY

■ 1. Revise the authority citation for 28 CFR part 511 to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 751, 752, 1791, 1792, 1793, 3050, 3621, 3622, 3624, 4001, 4012, 4042, 4081, 4082 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Subpart B is revised as follows:

## Subpart B—Searching and Detaining or Arresting Non-Inmates

Sec.



### § 511.10 Purpose and scope.

(a) This subpart facilitates our legal obligations to ensure the safety, security, and orderly operation of Bureau of Prisons (Bureau) facilities, and protect the public. These goals are furthered by carefully managing non-inmates, the objects they bring, and their activities, while inside a Bureau facility or upon the grounds of any Bureau facility (Bureau grounds).

(b) *Purpose.* This subpart covers:

(1) Searching non-inmates and their belongings (for example, bags, boxes, vehicles, containers in vehicles, jackets or coats, etc.) to prevent prohibited objects from entering a Bureau facility or Bureau grounds;

(2) Authorizing, denying, and/or terminating a non-inmate's presence inside a Bureau facility or upon Bureau grounds; and

(3) Authorizing Bureau staff to remove from inside a Bureau facility or upon Bureau grounds, and possibly arrest and detain, non-inmates suspected of engaging in prohibited activity.

(c) *Scope/Application.* This subpart applies to all persons who wish to enter, or are present inside a Bureau facility or upon Bureau grounds, other than inmates in Bureau custody. This subpart applies at all Bureau facilities and Bureau grounds, including administrative offices.

### § 511.11 Prohibited activities.

(a) ''Prohibited activities'' include any activities that could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public, whether or not such activities are criminal in nature.

(b) Examples of ''prohibited activities'' include, but are not limited to: Introducing, or attempting to introduce, prohibited objects into a Bureau facility or upon Bureau grounds; assisting an escape; and any other conduct that violates criminal laws or is prohibited by federal regulations or Bureau policies.

### § 511.12 Prohibited objects.

(a) ''Prohibited objects,'' as defined in 18 U.S.C. 1791(d)(1), include any objects that could jeopardize the Bureau's ability to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public.

(b) Examples of ''prohibited objects'' include, but are not limited to, the following items and their related paraphernalia: Weapons; explosives; drugs; intoxicants; currency; cameras of any type; recording equipment; telephones; radios; pagers; electronic devices; and any other objects that violate criminal laws or are prohibited by Federal regulations or Bureau policies.

### § 511.13 Searches before entering, or while inside, a Bureau facility or Bureau grounds.

Bureau staff may search you and your belongings (for example, bags, boxes, vehicles, containers in vehicles, jackets or coats, etc.) before entering, or while inside, any Bureau facilities or Bureau grounds, to keep out prohibited objects.

### § 511.14 Notification of possible search.

We display conspicuous notices at the entrance to all Bureau facilities, informing all non-inmates that they, and their belongings, are subject to search before entering, or while inside, Bureau facilities or grounds. Furthermore, these regulations and Bureau national and local policies provide additional notice that you and your belongings may be searched before entering, or while inside, Bureau facilities or grounds. By entering or attempting to enter a Bureau facility or Bureau grounds, non-inmates consent to being searched in accordance with these regulations and Bureau policy.

### § 511.15 When searches will be conducted.

You and your belongings may be searched, either randomly or based on reasonable suspicion, before entering, or while inside, a Bureau facility or Bureau grounds, as follows:

(a) *Random Searches.* This type of search may occur at any time, and is not based on any particular suspicion that a non-inmate is attempting to bring a prohibited object into a Bureau facility or Bureau grounds.

(1) Random searches must be impartial and not discriminate among non-inmates on the basis of age, race, religion, national origin, or sex.

(2) Non-inmates will be given the option of either consenting to random searches as a condition of entry, or refusing such searches and leaving Bureau grounds. However, if a non-inmate refuses to submit to a random search and expresses an intent to leave Bureau grounds, he or she may still be required to be searched if ''reasonable suspicion'' exists as described in paragraph (b) of this section.

(b) *Reasonable Suspicion Searches.* Notwithstanding staff authority to conduct random searches, staff may also conduct *reasonable suspicion* searches to ensure the safety, security, and orderly operation of Bureau facilities, and protect the public. ''Reasonable suspicion'' exists if a staff member knows of facts and circumstances that warrant rational inferences by a person with correctional experience that a non-inmate may be engaged in, attempting, or about to engage in, criminal or other prohibited activity.

### § 511.16 How searches will be conducted.

You may be searched by any of the following methods before entering, or while inside, a Bureau facility or Bureau grounds:

(a) *Electronically.* (1) You and your belongings may be electronically searched for the presence of contraband, either randomly or upon reasonable suspicion.

(2) Examples of electronic searches include, but are not limited to, metal detectors and ion spectrometry devices.

(b) *Pat Search.* (1) You and your belongings may be pat searched either randomly or upon reasonable suspicion.

(2) A pat search of your person or belongings involves a staff member pressing his/her hands on your outer clothing, or the outer surface of your belongings, to determine whether prohibited objects are present.

(3) Whenever possible, pat searches of your person will be performed by staff members of the same sex. Pat searches may be conducted by staff members of the opposite sex only in emergency situations with the Warden's authorization.

(c) *Visual Search.* You and your belongings may be visually searched as follows:

(1) *Person.* (i) A visual search of your person involves removing all articles of clothing, including religious headwear, to allow a visual (non-tactile) inspection of your body surfaces and cavities.

(ii) Visual searches of your person must always be authorized by the Warden or his/her designee and based on reasonable suspicion; random visual searches are prohibited.

(iii) When authorized, visual searches will be performed discreetly, in a private area away from others, and by staff members of the same sex as the non-inmate being searched. Visual searches may be conducted by staff members of the opposite sex in emergency situations with the Warden's authorization.

(iv) Body cavity (tactile) searches of non-inmates are prohibited.

(2) *Belongings.* A visual search of your belongings involves opening and exposing all contents for visual and manual inspection, and may be done either as part of a random search or with reasonable suspicion.

(d) *Drug Testing.* (1) You may be tested for use of intoxicating substances by any currently reliable testing method, including, but not limited to, breathalyzers and urinalysis.

(2) Drug testing must always be authorized by the Warden or his/her designee and must be based on reasonable suspicion that you are under the influence of an intoxicating substance upon entering, or while inside, a Bureau facility or Bureau grounds.

(3) Searches of this type will always be performed discreetly, in a private area away from others, and by staff members adequately trained to perform the test. Whenever possible, urinalysis tests will be conducted by staff members of the same sex as the non-inmate being tested. Urinalysis tests may be conducted by staff members of the opposite sex only in emergency situations with the Warden's authorization.

**§ 511.17 When a non-inmate will be denied entry to or required to leave a Bureau facility or Bureau grounds.**

At the Warden's, or his/her designee's, discretion, and based on this subpart, you may be denied entry to, or required to leave, a Bureau facility or Bureau grounds if:

(a) You refuse to be searched under this subpart; or

(b) There is reasonable suspicion that you may be engaged in, attempting, or about to engage in, prohibited activity that jeopardizes the Bureau's ability to ensure the safety, security, and orderly operation of its facilities, or protect the public. ''Reasonable suspicion,'' for this purpose, may be based on the results of a search conducted under this subpart, or any other reliable information.

**§ 511.18 When Bureau staff can arrest and detain a non-inmate.**

(a) You may be arrested and detained by Bureau staff anytime there is probable cause indicating that you have violated or attempted to violate applicable criminal laws while at a Bureau facility, as authorized by 18 U.S.C. 3050.

(b) ''Probable cause'' exists when specific facts and circumstances lead a reasonably cautious person (not necessarily a law enforcement officer) to believe a violation of criminal law has occurred, and warrants consideration for prosecution.

(c) Non-inmates arrested by Bureau staff under this regulation will be physically secured, using minimally necessary force and restraints, in a private area of the facility away from others. Appropriate law enforcement will be immediately summoned to investigate the incident, secure evidence, and commence criminal prosecution.

[FR Doc. E7–10925 Filed 6–5–07; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[CGD09–07–013]**

**RIN 1625–AA00**

## Safety Zone, Kenosha Harbor, Kenosha, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone near Kenosha Harbor, Kenosha, Wisconsin. This zone is intended to control the movement of vessels on portions of Lake Michigan and Great Lakes Naval Training Center Harbor during the Spill of National Significance (SONS) exercise on June 19 and 20, 2007. This zone is necessary to protect the public from the hazards associated with ships and boats deploying oil containment equipment.

**DATES:** This rule is effective from June 19, 2007 through June 20, 2007.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–07–013] and are available for inspection or copying at Coast Guard Sector Lake Michigan (spw), 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CWO Brad Hinken, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7154.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 23, 2007 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone, Kenosha Harbor, Kenosha, WI in the **Federal Register** (72 FR 20089). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule's effective date would be contrary to public interest. This rule is necessary in order to prevent traffic from transiting the waters during the SONS exercise and provide for the safety of life and property on navigable waters.

### Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and people from hazards associated with numerous vessels deploying oil containment boom and conducting diving operations. Based on the experiences in other Captain of the Port zones, the Captain of the Port Lake Michigan has determined numerous vessels engaged in the deployment of oil containment boom in close proximity to watercraft pose significant risk to public safety and property. The likely combination of large numbers of recreation vessels and congested

waterways could result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the SONS exercise will help ensure the safety of persons and property at these events and help minimize the associated risks.

**Discussion of Comments**

The Coast Guard did not receive comments in response to the Notice of proposed rulemaking (NPRM) published in the **Federal Register**.

**Discussion of Rule**

A temporary safety zone is necessary to ensure the safety of vessels during the deployment and recovery of oil containment boom in conjunction with the SONS exercise. The safety zone will be enforced between 8 a.m. and 6 p.m. on June 19 and 20, 2007.

The safety zone for the SONS exercise will encompass all waters of Lake Michigan 2,300 yards north of Kenosha Breakwater Light (Lightlist number 20430) and from the shoreline to 1,500 yards east Kenosha Breakwater Light (Lightlist number 20430) and bounded by a line with of point origin at 42°36′29″ N, 087°47′17″ W; then west to 42°36′29″ N, 087°49′07″ W; then south along the shoreline to 42°35′19″ N, 087°48′41″ W; then east, northeast to 42°35′24″ N, 087°47′17″ W; then north to the point of origin (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard will only enforce this safety zone for 10 hours a day on the two days specified. This safety zone has been designed to allow vessels to transit unrestricted to portions of the harbor not affected by the zone. The Captain of the Port will allow vessels to enter and depart Great Lakes Naval Training Center Harbor. The Coast Guard expects insignificant adverse impact to mariners from the activation of this zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners of vessels intending to transit or anchor in a portion of Lake Michigan between 8 a.m. and 6 p.m. (local) on June 19, 2007 and June 20, 2007. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only 20 hours. Vessel traffic can safely pass around the safety zone and enter and depart Kenosha Harbor.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will not effect the taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this safety zone and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have

a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Proposed Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard has amended 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–013 to read as follows:

**§ 165.T09–013 Safety Zone, Kenosha Harbor, Kenosha, WI.**

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Michigan 2,300 yards north of Kenosha Breakwater Light (Lightlist number 20430) and from the shoreline to 1,500 yards east Kenosha Breakwater Light (Lightlist number 20430) and bounded by a line with of point origin at 42°36′29″ N, 087°47′17″ W; then west to 42°36′29″ N, 087°49′07″ W; then south along the shoreline to 42°35′19″ N, 087°48′41″ W; then east, northeast to 42°35′24″ N, 087°47′17″ W; then north to the point of origin (NAD 83).

(b) *Effective period.* This regulation is effective from 8 a.m. (local) on June 19, 2007 to 6 p.m. (local) on June 20, 2007.

(c) *Enforcement Period.* This regulation will be enforced from 8 a.m. (local) to 6 p.m. (local) on June 19, 2007 and from 8 a.m. (local) to 6 p.m. (local) on June 20, 2007.

(d) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or his on-scene representative.

Dated: May 16, 2007.

**Bruce C. Jones,**

*Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.*

[FR Doc. E7–10906 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2007–0091, FRL–8322–5]**

### Findings of Failure To Attain; State of Arizona, Phoenix Nonattainment Area; State of California, Owens Valley Nonattainment Area; Particulate Matter of 10 Microns or Less

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing its findings that the Phoenix Planning Area (Phoenix nonattainment area) and the Owens Valley Planning Area (Owens Valley nonattainment area) did not attain the 24-hour National Ambient Air Quality Standard (NAAQS) for particulate matter of 10 microns or less (PM–10) by the deadline mandated in the Clean Air Act (CAA or the Act), December 31, 2006. These findings are based on monitored air quality data for the PM–10 NAAQS from 2004 through September 2006.

Several Indian tribes have reservations located within the boundaries of the Phoenix and Owens Valley nonattainment areas. EPA implements CAA provisions for determining whether such areas have attained the NAAQS by the applicable attainment deadline. After affording the affected tribal leaders the opportunity to consult with EPA on its proposed actions, the Agency is also finding that

the tribal areas have failed to attain the 24-hour PM–10 NAAQS.

As a result of these failures to attain findings, Arizona and California must submit by December 31, 2007, plan provisions that provide for attainment of the 24-hour PM–10 NAAQS and that achieve 5 percent annual reductions in PM–10 or PM–10 precursor emissions as required by CAA section 189(d).

**DATES:** *Effective Date:* This rule is effective on July 6, 2007.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2007–0091 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** For Phoenix issues contact Doris Lo, EPA Region IX, (415) 972–3959, *lo.doris@epa.gov*; for Owens Valley issues contact Larry Biland, EPA Region IX, (415) 947–4132, *biland.larry@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we,'' ''us,'' or ''our'' are used, we mean EPA.

## I. Proposed Action and Subsequent Air Quality Data

On March 23, 2007, EPA proposed to find that the Phoenix and Owens Valley nonattainment areas failed to attain the 24-hour PM–10 NAAQS by the CAA deadline, December 31, 2006. For details on the background and air quality data supporting these proposed findings, please see the proposed rule. 72 FR 13725.

In our proposed rule we noted that the data on which we based our proposed findings of failure to attain were collected from January 2004 through September 2006. EPA normally uses three complete calendar years of data to determine an area's attainment status. However, when less data are sufficient to unambiguously establish nonattainment, 40 CFR part 50, appendix K, section 2.3(c) allows EPA to determine that a monitor is in violation of the PM–10 NAAQS. In the case of the Phoenix and Owens Valley nonattainment areas, two years and nine months of data were available at the time of the proposed rule and clearly indicated that the areas were in violation of the 24-hour PM–10 NAAQS. Thereafter Arizona and California have submitted data for October through December 2006 to EPA's Air Quality System (AQS) database. These data indicate that there have been no additional exceedances of the PM–10 standard in the Phoenix and Owens Valley areas.[1] Therefore, the inclusion of these data does not affect EPA's proposed nonattainment findings for these areas.

## II. Public Comments and EPA Responses

By letters dated March 15, 2007, EPA invited the Indian tribes located within the boundaries of the Phoenix and Owens Valley nonattainment areas to consult with us on the proposed findings. We received no response from the tribes. Moreover, EPA did not receive any adverse comments regarding the findings of failure to attain. Below is a summary of the comments we received and our responses.

*Comments regarding Phoenix:* In general, commenters agreed with EPA's proposed nonattainment finding for the Phoenix nonattainment area. Two commenters wanted EPA to impose sanctions because the area has received attainment date extensions and has still failed to achieve the attainment deadline.

*Response:* The consequence of the Phoenix nonattainment area's failure to attain the 24-hour PM–10 standard by December 31, 2006 is a finding of failure to attain that results in new PM–10 planning requirements and deadlines. See CAA sections 179(c) and 189(d). Under the CAA, failure to meet attainment deadlines does not result in the imposition of sanctions. However, under CAA section 179(a) and (b), if EPA determines that Arizona fails to submit a new plan by December 31, 2007, or determines that such a plan is incomplete, or if EPA disapproves such a plan in whole or in part, the Agency must impose offset or highway sanctions unless the deficiency has been corrected within 18 months.

*Comment regarding Owens Valley:* EPA received comments on the history of the Owens Valley nonattainment area's PM–10 nonattainment problem and the controls undertaken and committed to by the City of Los Angeles.

*Response:* EPA appreciates the information. The Great Basin Unified Air Pollution Control District and the City of Los Angeles will need to continue to work together to attain the PM–10 standard in the Owens Valley nonattainment area.

## III. EPA Action

EPA is finding that the Phoenix and Owens Valley nonattainment areas did not attain the 24-hour PM–10 NAAQS by the December 31, 2006 attainment deadline.

Under section 189(d) of the Act, serious PM–10 nonattainment areas that fail to attain are required to submit within 12 months of the applicable attainment date, ''plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.''

In accordance with CAA section 179(d)(3), the attainment deadline applicable to an area that misses the serious area attainment date is as soon as practicable, but no later than 5 years from the publication date of the nonattainment finding notice. EPA may, however, extend the attainment deadline to the extent it deems appropriate for a period no greater than 10 years from the publication date, ''considering the severity of nonattainment and the availability and feasibility of pollution control measures.'' In addition to the attainment demonstration and 5 percent requirements, the plans under section 189(d) for the Phoenix and Owens Valley nonattainment areas must

[1] Table 1 in the proposed rule (''Phoenix Nonattainment Area PM–10 Data Summary 2004–2006 Sites in Violation of the 24-hour PM–10 NAAQS'') provides details on the number of observed and estimated exceedances recorded at five monitoring sites in the Phoenix nonattainment area from January 2004 through September 2006. 72 FR at 13725. While the attainment status of the monitors did not change based on the inclusion of data from October through December 2006, we no longer consider one of the sites listed in Table 1, Higley (AQS# 04–013–4006), to be in violation of the NAAQS. As indicated in footnote 2 of the proposed rule, EPA has concurred with several of Arizona's requests to exclude certain exceedances of the 24-hour PM–10 NAAQS from consideration in our nonattainment finding because these exceedances were due to exceptional or natural events. *Id.* Since we prepared the proposed rule, EPA has also concurred with Arizona's request to exclude two exceedance days at the Higley monitor (April 14 and 15, 2006) as being due to natural events. (March 14, 2007 letter to Nancy C. Wrona, Arizona Department of Environmental Quality from Sean Hogan, EPA). When these exceedances are excluded, the average annual estimated number of exceedances at Higley drops from 1.2 per year to 1.0 per year. The standard is attained when the estimated number of exceedances is less than or equal to one per year. See 40 CFR 50.6(a). However, even with the exclusion of the Higley data, the Phoenix nonattainment area is still in violation of the 24-hour PM–10 NAAQS based on the exceedances listed in Table 1 for the other four sites.

address all applicable requirements of the CAA, including sections 110(a), 172(c), 176(c) and 189(c)(1).

Because the applicable attainment date for both nonattainment areas was December 31, 2006, under section 189(d), the submittal deadline for the plans will be December 31, 2007.

### IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action in and of itself establishes no new requirements, it merely notes that the air quality in the Phoenix nonattainment area and the Owens Valley nonattainment area did not meet the federal health standard for PM–10 by the CAA deadline. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule does not in and of itself establish new requirements, EPA believes that it is questionable whether a requirement to submit a SIP revision constitutes a federal mandate. The obligation for a State to revise its SIP arises out of sections 110(a), 179(d), and 189(d) of the CAA and is not legally enforceable by a court of law, and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 658(a)(I)). Even if it did, the duty could be viewed as falling within the exception for the condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)). Therefore, today's action does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Several Indian tribes have reservations located within the boundaries of the Phoenix and Owens Valley nonattainment areas. EPA is responsible for the implementation of federal Clean Air Act programs in Indian country, including findings of failure to attain. EPA has notified the affected tribal officials and consulted with all interested tribes, as provided for by Executive Order 13175 (65 FR 67249, November 9, 2000). EPA contacted each tribe and gave them the opportunity to enter into consultation on a government-to-government basis. This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not in and of itself create any new requirements and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant. Because these findings of failure to attain are factual determinations based on air quality considerations, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 6, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2007.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E7–10857 Filed 6–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 261

**[EPA–R07–RCRA–2006–0923; FRL–8322–6]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is granting a petition submitted by the Ford Motor Company Kansas City Assembly Plant (Ford) to exclude (or delist) a wastewater treatment plant (WWTP) sludge generated by Ford in Claycomo, Missouri, from the lists of hazardous wastes. This final rule responds to the petition submitted by Ford to delist F019 WWTP sludge generated from the facility's waste water treatment plant.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned waste is not hazardous waste. This exclusion applies to 2,000 cubic yards per year of the F019 WWTP sludge. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when it is disposed in a Subtitle D Landfill.

**DATES:** The final rule is effective on June 6, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R07–RCRA–2006–0923. All documents in the docket are listed on www.regulations.gov Web site. Although listed in the index, some information is not publicly available,

e.g., confidential business information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or by appointment by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section below. Appointments can be made during the hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For more information on this rulemaking, contact Kenneth Herstowski at (913) 551–7631, or *herstowski.ken@epa.gov*, RCRA Corrective Action and Permits Branch, Air, RCRA and Toxics Division, 901 North 5th Street, Kansas City, Kansas 66101.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:



## I. Overview Information

### *A. What action is EPA finalizing?*

After evaluating the petition, EPA proposed on December 20, 2006, to exclude the waste water treatment plant sludge from the lists of hazardous waste under 40 Code of Federal Regulations (CFR) 261.31 and 261.32 (see 71 FR 76255). EPA is finalizing the decision to grant Ford's delisting petition to have its waste water treatment sludge managed and disposed as non-hazardous waste provided certain verification and monitoring conditions are met.

### *B. Why is EPA approving this action?*

Ford's petition requests a delisting from the F019 waste listing under 40 CFR 260.20 and 260.22. Ford does not believe that the petitioned waste meets the criteria for which EPA listed it. Ford also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of this petition included consideration of the original listing criteria and the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See section 3001(f) of RCRA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned waste against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the waste is nonhazardous with respect to the original listing criteria. If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition. EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. EPA's final decision to delist waste from Ford's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Claycomo, Missouri, facility.

### *C. What are the limits of this exclusion?*

This exclusion applies to the waste described in the petition only if the requirements described in § 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

### *D. How will Ford manage the waste if it is delisted?*

The WWTP sludge from Ford will be disposed of in a RCRA Subtitle D landfill.

### *E. When is the final delisting exclusion effective?*

This rule is effective June 6, 2007. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allows rules to become effective less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

### *F. How does this final rule affect states?*

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally-issued exclusion from taking effect in the state. If so, Ford must obtain authorization from that state before it can transport or manage the waste as nonhazardous in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact each State regulatory authority to establish the status of their wastes under the State law while it is transported or managed as nonhazardous in the state.

EPA has also authorized some states (for example, Georgia, Illinois, Louisiana, Nebraska, and Oklahoma) to administer a RCRA delisting program in place of the Federal program; that is, to make state delisting decisions. Therefore, this exclusion does not apply in authorized states unless that state makes the rule part of its authorized program. If Ford transports the petitioned waste to or manages the waste in any state with delisting authorization, Ford must obtain

delisting authorization from that state before it can transport or manage the waste as nonhazardous in the state.

## II. Background

*A. What is a delisting petition?*

A delisting petition is a request from a generator to EPA, or another agency with jurisdiction, to exclude or delist from the RCRA list of hazardous waste, certain wastes the generator believes should not be considered hazardous under RCRA.

*B. What regulations allow facilities to delist a waste?*

Under §§ 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR Parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

*C. What information must the generator supply?*

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

## III. EPA's Evaluation of the Waste Information and Data

*A. What waste did Ford petition EPA to delist?*

On May 31, 2006, Ford petitioned EPA to exclude from the lists of hazardous wastes contained in § 261.31, WWTP sludge (F019) generated from its facility located in Claycomo, Missouri. The waste falls under the classification of listed waste pursuant to § 261.31.

*B. How much waste did Ford propose to delist?*

Specifically, in its petition, Ford requested that EPA grant a standard exclusion for 2,000 cubic yards per year of the WWTP sludge.

*C. How did Ford sample and analyze the waste data in this petition?*

To support its petition, Ford submitted:

(1) Historical information on waste generation and management practices;

(2) Analytical results from six samples for total concentrations of constituents of concern; and

(3) Analytical results from six samples for Toxicity Characteristic Leaching Procedure (TCLP) extract values.

## IV. Public Comments Received on the Proposed Exclusion

*A. Who submitted comments on the proposed rule?*

Comments were submitted by Ford Motor Company requesting clarification of certain testing requirements, the Alliance of Automobile Manufacturers supporting the proposed delisting and the Missouri Department of Natural Resources to correct information in the proposed rule.

*B. What were the comments and what are EPA's responses to them?*

1. Revision of the F019 Listing as it Pertains to Auto Manufacturers

*Comment:* The Alliance of Automobile Manufacturers in its comments urged EPA to comprehensively resolve the longstanding issue of the F019 listing as it pertains to auto manufacturers by issuing an interpretive rule, which would exclude for the F019 classification all wastewater treatment sludges from facilities that use zinc phosphate aluminum processes rather than hexavalent chromium and cyanide processes that led to the original listing of F019 sludge.

*Response:* EPA has proposed changes to the F019 listing that are responsive to the commenter (see 72 FR 2219, January 18, 2007). Given EPA's proposed rulemaking on this issue, EPA will not provide further response here.

2. Analysis of Excluded Wastes

*Comment:* The Alliance of Automobile Manufacturers in its comments requests EPA remove the requirements for analysis of total concentrations of constituents as part of the verification testing of Ford's delisted sludge. The commenter believes that total concentrations of a constituent have no scientific correlation with environmental impacts.

*Response:* EPA evaluates the potential environmental impact of plausible mismanagement of the waste in a solid waste landfill. EPA evaluates the potential off-site migration of waste particles and volatile organic compounds via air and surface water pathways as a result of inadequate cover and runoff control. EPA believes that inadequate daily cover and rainwater runoff control are plausible mismanagement scenarios for a solid waste landfill. Furthermore, since the source of this potential off-site migration is newly deposited waste at the surface of the landfill, total concentrations are appropriate inputs for fate and transport modeling.

3. Delisting Levels

Toxicity Characteristic Leaching Procedure

*Comment:* The Missouri Department of Natural Resources comments that as proposed Ford's sludge could exhibit a characteristic of hazardous waste and still be excluded. Specifically, the commenter points out that Toxicity Characteristic Leaching Procedure (TCLP) results greater than those which would make a solid waste hazardous under 40 CFR 261.24 are allowed in the proposal.

*Response:* EPA reviewed the proposed TCLP delisting levels in Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22, Table 1.—Wastes Excluded from Non-Specific Sources. The constituents found in 40 CFR 261.24 for which TCLP delisting levels were proposed included: barium—100 mg/l, chromium—5 mg/l, and mercury—0.155 mg/l. All of those levels are at or below the levels at which a solid waste would exhibit a characteristic of hazardous waste and therefore be a hazardous waste. There may be confusion regarding the application of these delisting levels as when the waste meets the exclusion. EPA has clarified in the final language that the TCLP concentrations may not equal or exceed the levels given in the table.

The commenter may also be suggesting that the exclusion should include delisting levels for all TCLP parameters. EPA evaluated all the constituents in Ford's waste and developed delisting levels based upon that information. Inclusion of additional TCLP parameters is not justified at this time. Ford must notify EPA of any significant changes in the manufacturing process, the chemicals used, the treatment process or the chemicals used in the treatment process. If any of those changes occur, Ford must manage the sludge as a hazardous waste until it can be demonstrated that it still meets the delisting levels in the exclusion, that no new hazardous constituents listed in Appendix VIII of 40 CFR part 261 have been introduced

and has received approval from EPA for the changes.

Land Disposal Restrictions and Delisting Levels

*Comment:* The Missouri Department of Natural Resources comments that the delisting levels proposed do not correspond to the Land Disposal Restriction treatment standards found in 40 CFR part 268.

*Response:* Ford is requesting delisting of its F019 waste at the point of its generation. EPA's proposed exclusion was also at the point of generation. Since the waste will be excluded at the point of its generation (subject to periodic verification testing), the land disposal restrictions will not apply. This is in contrast to a hypothetical case where a hazardous waste is treated subsequent to its generation and the residuals from the treatment of the hazardous waste would be subject to the land disposal restrictions. If a person were to seek delisting of the residuals in the aforementioned hypothetical case, the land disposal restriction treatment standards for which the original waste were subject to would continue to apply and would be considered in determining the appropriate delisting levels.

4. Verification Sample Analysis

*Comment:* Ford requests clarification if the TCLP cyanides parameter listed in the proposed exclusion for quarterly verification sampling is a total cyanide test on the TCLP leachate. The possible options would be amenable or available cyanide.

Response: EPA affirmed the distinction between free cyanide and complex metal cyanides in its 1992 final rule, Drinking Water; National Primary Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals (57 FR 31776, July 17, 1992). EPA specifically stated that the maximum contaminant level goal (MCLG) of 0.2 mg/L cyanide applies to free cyanides, not complex metal cyanides. EPA further stated that a total cyanide analytical technique is allowed to screen samples. If the total cyanide results are greater than the MCL, then the analysis for free cyanide would be required to determine whether there is an exceedance of the MCL. EPA specifies the use of the cyanide amenable to chlorination test for determining free cyanide. Therefore, the cyanide amenable to chlorination test is the appropriate test for verification sampling and analysis to demonstrate continued compliance with the exclusion. Ford may use a total cyanide test for the TCLP leachate as a screening test. However, if the results of a total cyanide test on the TCLP leachate exceed the delisting levels and the cyanide amenable to chlorination test is not conducted, then EPA will rely on the total cyanide test results to determine Ford's compliance with the exclusion.

## V. Statutory and Executive Order Reviews

Under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993) this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988, ''Civil Justice Reform'', (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

**List of Subjects in 40 CFR Part 261**

Environmental protection, Hazardous waste, Recycling, Waste treatment and disposal.

**Authority:** Section 3001(f) RCRA, 42 U.S.C. 6921(f). Authority for this action has been delegated to the Regional Administrator (61 FR 32798, June 25, 1996).

Dated: May 29, 2007.

**John B. Askew,**

*Regional Administrator, Region 7.*

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 the following wastestream is added in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| * | * | * * * * * |
| Ford Motor Company, Kansas City Assembly Plant. | Claycomo, Missouri ..... | Wastewater treatment sludge, F019, that is generated at the Ford Motor Company (Ford) Kansas City Assembly Plant (KCAP) at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of June 6, 2007.<br>1. Delisting Levels: (a) The concentrations in a TCLP extract of the waste measured in any sample may not equal or exceed the following levels (mg/L): barium—100; chromium—5; mercury—0.155; nickel—90; thallium—0.282; zinc—898; cyanides—11.5; ethyl benzene—42.6; toluene—60.8; total xylenes—18.9; bis(2-ethylhexyl) phthalate—0.365; p-cresol—11.4; 2,4-dinitrotoluene—0.13; formaldehyde—343; and napthalene—.728;<br>(b) The total concentrations measured in any sample may not exceed the following levels (mg/kg): chromium 760000; mercury—10.4; thallium—116000; 2,4-dinitrotoluene—100000; and formaldehyde—6880.<br>2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, Ford must collect and analyze one representative sample of KCAP's sludge on a quarterly basis.<br>3. Changes in Operating Conditions: Ford must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process at KCAP significantly change. Ford must handle wastes generated at KCAP after the process change as hazardous until it has demonstrated that the waste continues to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and Ford has received written approval from EPA for the changes.<br>4. Data Submittals: Ford must submit the data obtained through verification testing at KCAP or as required by other conditions of this rule to EPA Region 7, Air, RCRA and Toxics Division, 901 N. 5th, Kansas City, Kansas 66101. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. Ford must compile, summarize, and maintain at KCAP records of operating conditions and analytical data for a minimum of five years. Ford must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).<br>5. Reopener Language—(a) If, anytime after disposal of the delisted waste, Ford possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste at KCAP indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then Ford must report such data in writing to the Regional Administrator within 10 days of first possessing or being made aware of that data.<br>(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify Ford in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing Ford with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. Ford shall have 30 days from the date of the Regional Administrator's notice to present the information. |

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | (d) If after 30 days Ford presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. |
| * * * | * * * | * * * |

[FR Doc. E7–10854 Filed 6–5–07; 8:45 am]
**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 2

**[ET Docket No. 03–108; FCC 07–66]**

### Cognitive Radio Technologies and Software Defined Radios

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document responds to two petitions concerning the rules adopted in the *Report and Order* in this proceeding (''Cognitive Radio Report and Order''). The Commission granted a petition for clarification filed by Cisco Systems, Inc. (''Cisco'') requesting that the Commission clarify the requirement to approve certain devices as software defined radios, and its policy on the confidentiality of software that controls security measures in software defined radios. The Commission also granted in part and denied in part a petition for reconsideration filed by Marcus Spectrum Solutions (''MSS'') requesting that the Commission clarify the rules concerning the submission of radio software source code, clarify the rules concerning the certification of software defined amateur radio equipment, and initiate a further proceeding to adopt regulatory requirements for high-power, high-speed digital-to-analog (D/A) converters.

**DATES:** Effective July 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Hugh Van Tuyl, Policy and Rules Division, Office of Engineering and Technology, (202) 418–7506, e-mail: *Hugh.VanTuyl@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Memorandum Opinion and Order,* ET Docket No. 03–108, FCC 07–66, adopted April 20, 2007 and released April 25, 2007. The full text of this document is available on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

**Summary of the Memorandum Opinion and Order**

1. On March 17, 2005, the Commission adopted the *Cognitive Radio Report and Order* 70 FR 23032, May 4, 2005, in which it modified the rules to reflect ongoing technical developments in cognitive and software defined radio technologies. In response to the *Cognitive Radio Report and Order,* Cisco and MSS each filed a petition seeking reconsideration or clarification of various aspects of the Commission's decisions in the *Cognitive Radio Report and Order.* The Information Industry Technology Council (''ITI'') filed comments in opposition of MSS' petition. No comments were filed in response to Cisco's petition. In response to the two petitions concerning the rules adopted in the *Cognitive Radio Report and Order* in this proceeding, the Commission granted the petition for clarification filed by Cisco Systems, Inc. (''Cisco'') requesting that the Commission clarify: (1) The requirement to approve certain devices as software defined radios, and (2) its policy on the confidentiality of software that controls security measures in software defined radios. The Commission also granted in part and denied in part a petition for reconsideration filed by Marcus Spectrum Solutions (''MSS'') requesting that the Commission (1) Clarify the rules concerning the submission of radio software source code, (2) clarify the rules concerning the certification of software defined amateur radio equipment, and (3) initiate a further proceeding to adopt regulatory requirements for high-power, high-speed digital-to-analog (D/A) converters.

2. In the *Cognitive Radio Report and Order,* the Commission modified the rules to require that radios in which the software is designed or expected to be modified by a party other than the manufacturer be certified as software defined radios. To minimize the filing burden on manufacturers, this requirement was narrowly tailored to affect only those radios where the software can be modified by a party other than the manufacturer because such radios pose a higher risk of interference to authorized radio services. The definition of software defined radio (SDR) is intentionally broad, while the category of equipment that is required to be certified as SDRs is intentionally narrow. The Commission agrees with Cisco that a reading of the definition of SDR in the rules by itself may give the incorrect impression that more devices must be certified as SDRs than the rules intended to require. The Commission finds that the appropriate solution to Cisco's concern is to add an additional sentence following the definition of SDR to indicate the class of radios that must be certified as SDRs. It therefore clarifies the rules by adding the following statement to the definition of SDR: ''In accordance with § 2.944 of this part, only radios in which the software is designed or expected to be modified by a party other than the manufacturer and would affect the listed operating parameters or circumstances under which the radio transmits must be certified as software defined radios.'' This action clarifies the intent of the rules adopted in the *Cognitive Radio Report and Order.*

3. With regard to Cisco's second request, the Commission recognizes that some manufacturers may wish to use open source software (*e.g.*, GNU/Linux) in developing SDRs. The use of such software may have advantages for manufacturers such as lower cost and decreased product development time.

However, as Cisco notes, open source software may be subject to licensing agreements that require the party modifying the code to make the source code publicly available. The Commission did not address the possibility of manufacturers using open source software to implement security measures. However, it recognizes that hardware and software security measures that interact with the open source software need not be subject to an open source agreement. The Commission hereby states that it is its policy, consistent with the intent of *Cognitive Radio Report and Order* and Cisco's request, that manufacturers should not intentionally make the distinctive elements that implement that manufacturer's particular security measures in a software defined radio public, if doing so would increase the risk that these security measures could be defeated or otherwise circumvented to allow operation of the radio in a manner that violates the Commission's rules. A system that is wholly dependent on open source elements will have a high burden to demonstrate that it is sufficiently secure to warrant authorization as a software defined radio.

4. In response to the MSS petition for reconsideration, the Commission clarifies that in the event that questions arise about the compliance of a particular device, its staff has the authority to request and examine any component, whether software or hardware, of a radio system when needed for certification under Commission rules. The manufacturer could request that the Commission hold the information confidential, and the Commission would generally grant such a request absent a compelling reason otherwise. The Commission expects that requests for software source code would be extremely rare. It would not be burdensome for a manufacturer to request confidentiality for software source code, and the Commission finds there is no need to modify the confidentiality rules to address a specific class of information that would be requested only infrequently.

5. The Commission declines to take any actions with respect to regulating the marketing of certain types of D/A converters. MSS does not demonstrate any current need for regulation of D/A converters. It admits that the types of D/A converters that it is concerned about are not presently on the market, and that it is not aware of any discussions about the possible marketing of these types of D/A converters. The Commission therefore finds that MSS' concerns about possible misuse of equipment not available now or in the foreseeable future are premature, speculative, and not a basis for initiating a further rule making proceeding at this time.

6. In regard to MSS' request for clarification about the regulatory treatment of amateur radio equipment, the Commission did not intend to impose any new certification requirements for amateur radio equipment in the *Cognitive Report and Order.* External RF amplifiers that operate below 144 MHz that are marketed for use with amateur stations will continue to require certification before they can be marketed. Other amateur radio equipment, including equipment that meets the definition of a software defined radio and that has software that is designed or expected to be modified by a party other than the manufacturer, will continue to be exempt from a certification requirement. However, as the Commission noted in the *Cognitive Report and Order,* certain unauthorized modifications of amateur transmitters are unlawful. It may revisit the issue of the certification of amateur equipment with software modifiable features as identified above in the future if misuse of such devices results in significant interference to authorized spectrum users.

**Procedural Matters**

7. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [2] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [3] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

8. In the *Cognitive Radio Report and Order,* the Commission expanded the definition of software defined radio (SDR) to include radios in which software can control the circumstances under which the radio operates in accordance with the Commission's rules. This broad definition covers both radios that have software embedded on chips or implemented in other ways so that the software cannot be readily changed by the user, as well as radios that are designed so the software can be easily changed after manufacture. In the *Cognitive Radio Report and Order,* the Commission also modified the rules to require that a radio be approved as an SDR if the software that controls the operating parameters or the circumstances under which it transmits is designed or expected to be modified by a party other than the manufacturer. This requirement applies to only a narrow subset of radios that meet the definition of SDR. A Final Regulatory Flexibility Analysis was incorporated in the *Cognitive Radio Report and Order.* Following publication of the *Cognitive Radio Report and Order,* Cisco filed its petition seeking clarification of which radios require certification as SDRs. In the *Memorandum Opinion and Order*, the Commission amended the definition of SDR to reference the requirements concerning which radios must be certified as SDRs. This change clarifies the rules adopted in the *Cognitive Radio Report and Order* and does not modify any compliance requirements. For this reason, this change will not result in a ''significant economic burden'' on manufacturers. Therefore, we certify that the amendments included in the *Memorandum Opinion and Order* will not have a significant economic impact on a substantial number of small entities.

9. The Commission will send a copy of the *Memorandum Opinion and Order,* including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act.[5] In addition, the *Memorandum Opinion and Order* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[6]

10. This document does not contain any information collection requirements

[1] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[5] *See* 5 U.S.C. 801(a)(1)(A).

[6] *See* 5 U.S.C. 605(b).

subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

**Ordering Clauses**

11. Pursuant to the Section 1, 4, 301, 302(a), and 303, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), and 303, the *Memorandum Opinion and Order is adopted,* and part 2 of the Commission's Rules is amended as specified in the attached appendix, and will become effective 30 days after publication in the **Federal Register**.

12. The petition for clarification filed by Cisco Systems, Inc. is hereby granted. This action is taken pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r).

13. The petition for reconsideration filed by Marcus Spectrum Solutions is hereby granted in part and denied in part. This action is taken pursuant to the authority contained in Sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), and 303(r).

14. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of the *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 2**

Communications equipment, Radio, Reporting, and recordkeeping requirements.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Final Rule**

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 2 to read as follows:

## PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

Section 2.1(c) is amended by revising the definition of ''software defined radio'' to read as follows:

**§ 2.1 Terms and definitions.**

* * * * *

(c) * * *

*Software defined radio.* A radio that includes a transmitter in which the operating parameters of frequency range, modulation type or maximum output power (either radiated or conducted), or the circumstances under which the transmitter operates in accordance with Commission rules, can be altered by making a change in software without making any changes to hardware components that affect the radio frequency emissions. In accordance with § 2.944 of this part, only radios in which the software is designed or expected to be modified by a party other than the manufacturer and would affect the above-listed operating parameters or circumstances under which the radio transmits must be certified as software defined radios.

* * * * *

[FR Doc. 07–2684 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 20 and 80

**[WT Docket No. 04–257; FCC 07–87]**

### Maritime Communications

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission or FCC) amends its rules to afford licensees of VHF Public Coast (VPC) stations and Automated Maritime Telecommunications System (AMTS) stations additional operational flexibility to provide service to units on land. Specifically, the Commission adopts rule changes to permit VPC and AMTS licensees to offer private correspondence service to units on land, *i.e.*, private land mobile radio (PLMR) service, in addition to the public correspondence service they already are authorized to provide to units on land. These rule amendments will enable VPC and AMTS licensees to compete more effectively against other commercial mobile radio service providers; facilitate more efficient use of VPC and AMTS spectrum; and provide an additional means to meet growing demand for spectrum by PLMR licensees and end users, including public safety and critical infrastructure industry entities. The Commission also believes that the core purpose for which these frequencies have been allocated is to serve the communications needs of marine vessels, especially with respect to communications in support of the safety of life and property at sea and on inland waterways.

**DATES:** Effective July 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1617, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Federal Communications Commission's *Report and Order* in WT Docket No. 04–257 *(Report and Order)*, FCC 07–87, adopted on May 9, 2007, and released on May 10, 2007. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an e-mail to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

1. The *Report and Order* addresses issues raised in the *Notice of Proposed Rule Making (NPRM)* in this WT Docket No. 04–257 proceeding. The Commission takes the following significant actions in the *Report and Order:* (i) Authorizes VPC and AMTS licensees to provide private correspondence service to units on land; (ii) specifies that AMTS stations providing private land mobile radio service do not have to be interconnected to the public switched telephone network, but retains that interconnection requirement for AMTS stations providing commercial mobile radio service; (iii) clarifies that VPC and AMTS licensees providing service to units on land must continue to ensure that maritime communications have priority, while also clarifying that a licensee's practice of dedicating separate channels for land mobile communications, on the one hand, and maritime communications, on the other, does not necessarily satisfy the maritime priority requirement although it may satisfy the requirement in certain circumstances; (iv) declines to permit VPC and AMTS licensees to provide service to units on land pursuant to regulations other than those in part 80, except pursuant to a waiver, and (v) declines to amend the part 80 rules to specify that VPC channels may be used for port operations and ship movement

services, either in simplex or duplex mode.

**I. Procedural Matters**

*A. Paperwork Reduction Act Analysis*

2. The *Report and Order* does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

*B. Report to Congress*

3. The Commission will send a copy of this *Report and Order* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

*C. Final Regulatory Flexibility Analysis*

4. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order

5. The rules adopted in the *Report and Order* are intended to provide VHF public coast (VPC) station and Automated Maritime Telecommunications Service (AMTS) stations with the additional flexibility to offer non-interconnected private correspondence communications service to units on land.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

6. No comments were submitted specifically in response to the IRFA. In addition, no commenter has opposed the rule amendments adopted herein based on their potential economic impact on small entities. These rule amendments do not impose any new requirements or compliance burdens on any affected entity, but rather benefit such entities by providing them with additional operational flexibility.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

7. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

8. The adopted rules would affect licensees using AMTS and VPC spectrum. In the *Third Report and Order* in PR Docket No. 92–257, the Commission defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* PR Docket No. 92–257, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812). Below, we provide the economic census category and data for wireless entities, which encompasses public coast stations.

9. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

10. The *Report and Order* does not impose any reporting, recordkeeping, or other compliance requirements on small entities.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

12. The rules adopted in the *Report and Order* will not have any adverse economic impact on small entities. To the contrary, they remove existing regulatory restrictions on the affected entities.

*D. Report to Congress*

13. The Commission will send a copy of this *Report and Order* in WT Docket No. 04–257, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Rule Changes**

■ For the reasons discussed in the preamble, the Federal Communications

Commission amends 47 CFR parts 20 and 80 as follows:

## PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

**Authority:** 47 U.S.C. 154, 160, 201, 251–254, 303, and 332 unless otherwise noted.

■ 2. Amend § 20.9 by revising paragraphs (b) introductory text and (b)(1) to read as follows:

**§ 20.9 Commercial mobile radio service.**

* * * * *

(b) Licensees of a Personal Communications Service or applicants for a Personal Communications Service license, and VHF Public Coast Station geographic area licensees or applicants, and Automated Maritime Telecommunications System (AMTS) licensees or applicants, proposing to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis must overcome the presumption that Personal Communications Service, VHF Public Coast, and AMTS Stations are commercial mobile radio services.

(1) The applicant or licensee (who must file an application to modify its authorization) seeking authority to dedicate a portion of the spectrum for private mobile radio service, must include a certification that it will offer Personal Communications Service, VHF Public Coast Station, or AMTS service on a private mobile radio service basis. The certification must include a description of the proposed service sufficient to demonstrate that it is not within the definition of commercial mobile radio service in § 20.3. Any application requesting to use any Personal Communications Service, VHF Public Coast Station, or AMTS spectrum to offer service on a private mobile radio service basis will be placed on public notice by the Commission.

* * * * *

## PART 80—STATIONS IN THE MARITIME SERVICES

■ 3. The authority citation for part 80 continues to read as follows:

**Authority:** Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 4. Amend § 80.5 by revising the definition of ''Automated maritime telecommunications system'' to read as follows:

**§ 80.5 Definitions.**

* * * * *

*Automated maritime telecommunications system (AMTS).* An automatic maritime communications system.

* * * * *

■ 5. Amend § 80.123 by revising the introductory text to read as follows:

**§ 80.123 Service to stations on land.**

Marine VHF public coast stations, including AMTS coast stations, may provide service to stations on land in accordance with the following:

* * * * *

■ 6. Amend § 80.371 by revising the introductory text of paragraph (c)(1)(i) to read as follows:

**§ 80.371 Public correspondence frequencies.**

* * * * *

(c) * * *

(1) (i) The frequency pairs listed in this paragraph are available for assignment to public coast stations for communications with ship stations and units on land.

* * * * *

■ 7. Amend § 80.475 by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 80.475 Scope of service of the Automated Maritime Telecommunications System (AMTS).**

* * * * *

(c) An AMTS system may provide private mobile radio service in addition to or instead of public correspondence service. However, such communications may be provided only to stations whose licensees make cooperative arrangements with the AMTS coast station licensees. In emergency and distress situations, services must be provided to ship stations without prior arrangements.

(d) AMTS systems providing private mobile radio service instead of, or in addition to, public correspondence service are not required to be interconnected to the public switched network when providing such private mobile radio service. AMTS systems providing public correspondence service must be interconnected to the public switched network, but the licensee may also offer non-interconnected services.

■ 8. Amend § 80.479 by revising paragraph (a) to read as follows:

**§ 80.479 Assignment and use of frequencies for AMTS.**

(a) The frequencies assignable to AMTS stations are listed in subpart H of this subpart.

* * * * *

[FR Doc. E7–10724 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 070427094–7113–02, I.D. 042407A]**

**RIN 0648–AV50**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Allocation of Trips in the Closed Area II Yellowtail Flounder Special Access Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; allocation of trips.

**SUMMARY:** NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has allocated zero trips to the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) during the 2007 fishing year (FY) (*i.e.*, May 1, 2007, through April 30, 2008). The Regional Administrator has determined that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for FY 2007. The intent of this action is to help achieve optimum yield (OY) in the fishery by maximizing the utility of available GB yellowtail flounder total allowable catch (TAC) throughout FY 2007.

**DATES:** Effective July 1, 2007 through April 30, 2008.

**ADDRESSES:** Copies of the final rule implementing the FY 2007 TAC for GB yellowtail flounder in the U.S./Canada Management Area are available upon request from the NE Regional Office at the following mailing address: George H. Darcy, Assistant Regional Administrator for Sustainable Fisheries, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Copies may also be requested by calling (978) 281–9315.

**FOR FURTHER INFORMATION CONTACT:** Mark Grant, Fishery Management Specialist, phone: (978) 281–9145, fax: (978) 281–9135, e-mail: *Mark.Grant@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** Framework Adjustment (FW) 40B (70 FR 31323; June 1, 2005), requires the Regional Administrator annually allocate the total number of trips into the CA II Yellowtail Flounder SAP. A formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The FY 2007 calculations for this equation were detailed in the proposed rule (72 FR 26770; May 11, 2007) and are not repeated here.

FW 40B authorized the Regional Administrator to allocate zero trips to this SAP if the available GB yellowtail flounder catch is not sufficient to support 150 trips with a 15,000-lb (6,804-kg) trip limit (*i.e.,* if the available GB yellowtail catch is less than 1,021 mt), as required. Using the formula developed in FW 40B and based on the 900-mt U.S./Canada GB yellowtail flounder TAC for 2007 (72 FR 25709; May 7, 2007), the Regional Administrator has determined that there will be insufficient GB yellowtail flounder TAC to support the CA II Yellowtail Flounder SAP for FY 2007. Therefore, zero trips are allocated to the SAP for FY 2007.

## Comments and Responses

Two comments were received on this action.

*Comment 1:* One commenter did not specifically address the proposed allocation of trips, but asserted that all of GB should be closed permanently because it has been denuded of all fish species.

*Response:* Amendment 13 (69 FR 22906; April 27, 2004) to the NE Multispecies Fishery Management Plan (FMP) implemented a rebuilding plan for all overfished stocks managed under the FMP. Included in this rebuilding plan was the CA II Yellowtail Flounder SAP. The Environmental Impact Statement for Amendment 13 determined that this SAP has minimal negative impacts to the GB yellowtail flounder stock, neutral impacts on Essential Fish Habitat, and negligible impacts on other stocks managed by the FMP. The current regulatory restrictions in place are designed to protect and rebuild fish stocks in accordance with applicable laws; therefore, it is not necessary to close BG to fishing in order to rebuild fish stocks.

*Comment 2:* Another commenter did not specifically address the proposed allocation of trips, but asserted that GB yellowtail flounder trip limits in the Western U.S./Canada Area were preventing the harvest of GB haddock.

*Response:* the GB yellowtail flounder TAC for FY 2007 is greatly reduced (57 percent less than FY 2006). For this reason, allowing any trips into this SAP will likely result in fully harvesting the TAC prior to the end of the fishing year, resulting in a possession ban for GB yellowtail flounder, premature closure of the entire Eastern U.S./Canada Area to all NE multispecies DAS vessels, and reduced opportunities to fully harvest the GB haddock and GD cod TACs in the Eastern U.S./Canada Area. NMFS is allocating zero trips to this SAP to help achieve OY in the U.S./Canada Area by maximizing the utility of available GB yellowtail flounder TAC throughout FY 2007.

## Classification

The Regional Administrator has determined that this action is necessary for the conservation and management of the NE multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule does not contain any new, nor revises existing reporting, recordkeeping, and other compliance requirements.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 31, 2007.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–2813 Filed 6–1–07; 2:46 pm]

**BILLING CODE 3510–22–M**

# Proposed Rules

Federal Register
Vol. 72, No. 108
Wednesday, June 6, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AC00**

## Common Crop Insurance Regulations; Cultivated Wild Rice Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new 457.170 that provides insurance for cultivated wild rice. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the cultivated wild rice pilot crop insurance program to a permanent insurance program for the 2009 and succeeding crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 6, 2007, and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments titled ''Cultivated Wild Rice Crop Insurance Provisions'', by any of the following methods:

- By Mail to Director, Product Administration & Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-Mail: *DirectorPDD@rma.usda.gov*.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday, except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Risk Management Specialist, Product Management, Product Administration & Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this proposed rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order No. 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economical impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

### Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to

require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

**Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

FCIC offered a pilot crop insurance program for cultivated wild rice beginning with the 1999 crop year in the states of Minnesota and California. In the 2006 crop year, approximately 20,500 acres were insured under the pilot program. FCIC contracted with an independent firm to conduct an evaluation of the cultivated wild rice pilot program. The evaluation found the pilot crop insurance program to be a valuable tool for wild rice producers. The evaluation could not identify any instances where the pilot program adversely affected the wild rice market. The contractor's report did recommend updating the premium rates by utilizing the pilot program's experience, remove two definitions, and correct the termination date contained in the Crop Provisions. FCIC's Board of Directors concurred with the evaluation results and approved the conversion of the pilot status to that of a permanent crop insurance program.

FCIC intends to convert the cultivated wild rice pilot crop insurance program to a permanent crop insurance program beginning with the 2009 crop year. To effectuate this, FCIC proposes to amend the Common Crop Insurance regulations (7 CFR part 457) by adding a new section § 457.170, Cultivated Wild Rice Crop Insurance Provisions. These provisions will replace and supersede the current unpublished provisions that insure cultivated wild rice under pilot program status.

Cultivated wild rice crop insurance is an actual production history (APH) plan of insurance that protects against a loss in yield. If the number of pounds produced by the crop is less than the production guarantee, the producer will receive an indemnity if the producer is in compliance with all other policy provisions. The production guarantee is determined the same as other APH crops. The producer certifies the number of pounds of wild rice produced per acre for at least the previous four crop years building to a base period of ten crop years and these amounts are averaged to determine the approved yield. The approved yield times the coverage level determines the production guarantee. The covered causes of loss are the same as for other APH crops and include such causes as adverse weather, fire, wildlife, plant disease, etc. The production to count is also determined the same as other crops with all appraised and harvested pounds counting against the guarantee when determining whether there was an indemnifiable loss.

In this proposed rule, FCIC has revised certain provisions of the pilot program to be consistent with other Crop Provisions and to improve the policy. In section 1, FCIC has removed the definitions of ''latest final planting date'' and ''processing.'' A definition of ''latest final planting date'' is not needed because separate fall and spring final planting dates are not provided for wild rice. Since the term ''processing'' is not used in the Crop Provisions it has been removed and replaced with the definition of ''processor,'' a term which is referenced in other definitions. FCIC also revised the definition of ''finished weight'' to add a provision that would provide the finish weight for appraised production. Currently, the policy only has provisions for delivered production and stored for seed, both which presume the crop has been harvested. However, the finish weight must also be determined in situations where the crop has not been harvested.

The termination date contained in section 5 has been revised to November 30th for Minnesota and some California counties. The current termination date does not allow producers sufficient time to pay their premiums. In addition, the cancellation and termination dates for some California counties have been revised to accommodate the different growing seasons and will allow expansion of the cultivated wild rice crop insurance program.

FCIC has revised section 10 to specify representative samples are required in accordance with section 14 of the Basic Provisions. This is consistent with other Crop Provisions and allows FCIC to only have to revise the Basic Provisions if changes are required, instead of many Crop Provisions.

Additionally, section 11(a) has been reformatted to be consistent with the changes made in other Crop Provisions and the Basic Provisions.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Cultivated wild rice, Reporting and recordkeeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2008 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Section 457.170 is added to read as follows:

**§ 457.170 Cultivated Wild Rice crop insurance provisions.**

The Cultivated Wild Rice Crop Insurance Provisions for the 2009 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate Title for Insurance Provider)

Both FCIC and reinsured policies:

Cultivated Wild Rice Crop Insurance Provisions

**1. Definitions**

*Approved laboratory.* A testing facility approved by us to determine the recovery percentage from samples of cultivated wild rice.

*Cultivated wild rice.* A member of the grass family *Zizania Palustris* L., adapted for growing in man-made irrigated fields known as paddies.

*Determined recovery percentage.* The recovery percentage for a sample, as determined by an approved laboratory.

*Finished weight.*

(a) The green weight delivered to a processor multiplied by the determined recovery percentage;

(b) The green weight stored for seed multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d); and

(c) Appraised green weight multiplied by either the determined recovery percentage or the standard recovery percentage in accordance with section 11(d).

*Flood irrigation.* Intentionally covering the planted acreage with water and maintaining it at a proper depth throughout the growing season.

*Green weight.* The total weight in pounds of the green cultivated wild rice production that was appraised, delivered to a processor, or stored for seed.

*Harvest.* Combining or threshing the cultivated wild rice for grain or seed.

*Initially planted.* The first occurrence of planting the insured crop on insurable acreage for the crop year.

*Planted acreage.* In addition to the definition contained in the Basic Provisions, land on which an adequate amount of seed is initially spread onto the soil surface by any appropriate method, including shattering for the second and succeeding years, and subsequently is mechanically incorporated into the soil at the proper depth, will be considered planted, unless otherwise provided by the Special Provisions or actuarial documents.

*Processor.* A business that converts green weight to finished weight using appropriate equipment and methods such as separating immature kernels, fermenting or curing, parching, dehulling, and scarifying.

*Recovery percentage.* The ratio of finished weight to green weight of the cultivated wild rice. This is also known as percent recovery.

*Shatter.* Mature seeds that naturally fall to the ground from a cultivated wild rice plant.

*Standard recovery percentage.* The recovery percentage contained in the Special Provisions.

**2. Unit Division**

Provisions in the Basic Provisions that allow optional units by irrigated and non-irrigated practices are not applicable.

**3. Insurance Guarantee, Coverage Levels, and Prices for Determining Indemnities**

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one percentage of the maximum price election for all the cultivated wild rice insured under this policy in the county.

(b) The insurance guarantee per acre is expressed as pounds of finished weight.

**4. Contract Changes**

In accordance with section 4 of the Basic Provisions the contract change date is November 30 preceding the cancellation date for counties with a February 28 cancellation date and June 30 preceding the cancellation date for counties with a September 30 cancellation date.

**5. Cancellation and Termination Dates**

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

| State | Cancellation date | Termination date |
|---|---|---|
| Mendocino, Glenn, Butte, and Sierra Counties, California; and all California Counties south thereof | February 28 | February 28. |
| Minnesota, All Other California Counties, and All Other States | September 30 | November 30. |

**6. Insured Crop**

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the cultivated wild rice in the county grown on insurable acreage for which premium rates are provided by the actuarial documents:

(1) In which you have a share;

(2) That is planted for harvest as grain; and

(3) That is grown in man-made flood irrigated fields.

(b) Section 8(b)(3) of the Basic Provisions is not applicable to the cultivated wild rice seed that naturally shatters and is subsequently mechanically incorporated into the soil.

**7. Insurance Period**

In accordance with section 11 of the Basic Provisions, the calendar date for the end of the insurance period is September 30 of the calendar year the crop is normally harvested for Minnesota, October 15 of the calendar year the crop is normally harvested for California, and for all other states, the date as provided in the Special Provisions.

**8. Causes of Loss**

(a) In accordance with section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if caused by a cause of loss specified in sections 8(a)(1) through (7) that occurs during the insurance period.

(b) In addition to the causes not insured against in section 12 of the Basic Provisions, we will not insure against any loss of production due to the crop not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions which preclude harvesting equipment from entering and moving about the field.

**9. Replanting Payments**

The provisions of section 13 of the Basic Provisions are not applicable.

**10. Duties in the Event of Damage or Loss**

Representative samples are required in accordance with section 14 of the Basic Provisions.

**11. Settlement of Claim**

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which such production records were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying the result in 11(b)(1) by the respective price election;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted, (see section 11(c) through (d)) by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting the result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of cultivated wild rice in the unit, with a guarantee of 400 pounds per acre and a price election of $1.00 per pound. You are only able to harvest 20,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 400 pounds = 40,000 pound guarantee;

(2) 40,000 pounds × $1.00/pound price election = $40,000 value of guarantee;

(3) 20,000 pounds × $1.00/pound price election = $20,000 value of production to count;

(4) $40,000 − $20,000 = $20,000 loss; and

(5) $20,000 × 100 percent share = $20,000 indemnity payment.

(c) The total production (finished weight) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested green weight production must be adjusted in accordance with section 11(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature green weight for appraised or harvested production will be multiplied by the recovery percentage subject to the following:

(1) We may obtain samples of the production to determine the recovery percentage.

(2) The determined recovery percentage will be used to calculate your loss only if:

(i) All determined recovery percentages are established using samples of green weight production obtained by us or by the processor for sold or processed production; and

(ii) The samples are analyzed by an approved laboratory.

(3) If the conditions of section 11(d)(2) are not met, the standard recovery percentage will be used.

**12. Late Planting**

The provisions of section 16 of the Basic Provisions are not applicable.

**13. Prevented Planting**

The provisions of section 17 of the Basic Provisions are not applicable.

Signed in Washington, DC, on May 30, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7–10824 Filed 6–5–07; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 457

**RIN 0563–AC01**

## Common Crop Insurance Regulations; Coverage Enhancement Option

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.172 Coverage Enhancement Option (CEO) that provides additional coverage to applicable crop provisions. The CEO will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops and with the crop provisions for which it is approved. At this time, RMA has no plans to expand CEO to crops other than Texas Citrus Trees. The intended effect of this action is to convert the pilot CEO to a permanent option for the 2008 and subsequent crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business August 6, 2007 and will be considered when the rule is to be made final.

**ADDRESSES:** Interested persons are invited to submit comments, titled ''Coverage Enhancement Option Insurance Provisions'', by any of the following methods:

- By Mail to: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676.
- E-mail: *DirectorPDD@rma.usda.gov.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

A copy of each response will be available for public inspection from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays at the above address.

**FOR FURTHER INFORMATION CONTACT:** William Klein, Risk Management Specialist, Product Management, Product Administration and Standards Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

**Paperwork Reduction Act of 1995**

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been previously approved by OMB under control number 0563–0053 through November 30, 2007.

**E-Government Act Compliance**

FCIC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal

governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Executive Order 13132**

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

**Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

**Executive Order 12988**

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

The Pilot Coverage Enhancement Option (CEO) was implemented beginning with the 2000 crop year for all counties for apples and grapes in Pennsylvania and Washington; canola in North Dakota; citrus Trees in Texas; cranberries in Massachusetts; potatoes in Idaho, Maine and Pennsylvania; rice in Arkansas, Louisiana, and Mississippi; stonefruit in California; and walnuts in California. For the 2001 crop year, CEO was expanded to citrus fruit in Florida and Texas. Citrus and stonefruit policies define additional ''crops'' by fruit type, for example, stonefruit includes fresh apricots, fresh peaches etc., so for insurance purposes, CEO was approved for 25 crops.

CEO was developed because producers expressed concern that the crop insurance program does not, in some cases, provide an adequate amount of coverage. The 75 percent coverage level, for many crops, is the highest coverage level offered, and some producers believed the cost for that coverage level was too expensive. They expressed a desire for higher amounts of coverage, without proportional premium rate increases affiliated with higher coverage levels. The CEO premium rate is set at the same rate as that of the underlying multiple peril crop insurance (MPCI) policy. CEO coverage levels available are from 55 percent through 85 percent, in 5 percent increments.

To be eligible for the program, producers must have an additional coverage level MPCI policy in force, with a price election of 100 percent for the insured crop and select the CEO by the sales closing date. They must choose a CEO coverage level of at least 5 percent higher than the MPCI base coverage level up to the maximum available CEO coverage level of 85 percent.

An indemnity does not trigger under CEO until the deductible of the underlying MPCI policy is met. For example, if the MPCI coverage level is 50 percent and the CEO option coverage level is 85 percent, the insured would have to sustain damage on the crop in excess of 50 percent before an indemnity would be paid under CEO.

RMA contracted for a review of CEO three years after it was implemented, and the contractor's final evaluation report was submitted on December 10, 2003. There were 25 crops approved for CEO, more than two-thirds of which were citrus tree and fruit crops insured in California, Florida, and Texas. Seven crops, most with minimal participation, had no losses since CEO was a pilot program, sixteen crops had minimal CEO participation and losses, and two crops had no CEO participation.

Nationwide, the percentage of acreage insured under CEO between 2000 and 2003 was low, except for Texas citrus trees, which had a high participation rate but no losses. The contractor determined apples, canola, grapes, potatoes, and rice had sufficient CEO participation and loss experience for a meaningful analysis. A comparison of the CEO losses relative to the non-CEO losses for these crops analyzed indicated a possible increase of poor or high-risk producers using CEO to obtain a higher amount of coverage, especially for apples and rice. The final report indicated further review was needed in order to draw a conclusion as to whether or not CEO is a greater insurance risk.

The contractor's recommendation was to terminate CEO for all crops except Texas citrus trees, due in part to the high level of CEO participation in the Texas citrus tree crop insurance program. The contractor found that CEO for Texas Citrus Trees provides additional coverage at a reasonable cost for a crop where the opportunity for adverse selection is limited by the design of the underlying policy. The contractor's recommendation was supported by the Federal Crop Insurance Corporation Board of

Directors on July 29, 2004. At that time, continuance of the CEO was approved for Texas citrus trees through the 2008 crop year. In order for CEO to be available for to Texas citrus tree producers for the 2009 crop year, it needs to be made permanent before the August 31, 2008, contract change date for Texas citrus trees. While the latest date RMA must convert CEO to a permanent program is August 31, 2008, RMA has targeted August 31, 2007, for conversion to a permanent program.

For the 2006 crop year, there were a total of 809 policies under the Texas Citrus Tree Crop Insurance Provisions, 714 buy-up and 95 Catastrophic Risk Protection (CAT) policies. There were 333 producers with CEO options, accounting for $45.2 million in liability and $2.4 million in premium. Forty-one percent of all Texas citrus tree insureds opted for CEO, accounting for 68 percent of the insured acreage for Texas citrus trees, 74 percent of the liability, and 75 percent of the premium.

FCIC is proposing to make changes to the pilot CEO policy. In section 1, FCIC is proposing to revise the definitions of ''MPCI dollar amount of insurance,'' ''MPCI indemnity factor,'' ''option dollar amount of insurance,'' and ''option coverage level.'' Previously, the definition of ''MPCI dollar amount of insurance'' did not explain how the value was determined for policies that are based on the actual production history so this will be clarified in the proposed definition. Further, the definition of ''MPCI indemnity factor'' did not explain that such factor is necessary to prorate losses in those cases where the producer does not suffer a total loss to the crop. The definition of ''option dollar amount of insurance'' did not accurately reflect how such amounts are calculated. FCIC is proposing to revise the provision to specify that such amount is determined by multiplying the option coverage level by the total value of the crop and subtracting the MPCI dollar amount of insurance (for example, if the coverage option selected is 80 percent and the MPCI dollar amount of insurance is $10,000 at the 50 percent coverage level, the option dollar coverage level would be $6,000 ($10,000 × 2 = $20,000 total value of the crop × .80 option coverage level = $16,000 combined MPCI and option dollar amounts of insurance—$10,000 MPCI dollar amount of insurance). In addition, the definition of ''option coverage level'' failed to discuss the relationship between the MPCI coverage level and the option coverage level. FCIC is proposing to revise the definition to specify that the effect of the option coverage level is to increase the coverage level under the MPCI policy from the MPCI coverage level to the option coverage level once a loss has been triggered under the MPCI policy.

FCIC is also proposing to add a definition of ''total value of the insured crop,'' which states that the total value is the MPCI dollar amount of insurance divided by the MPCI coverage level. This will determine what is the actual potential value of an undamaged crop and measure the total amount the producer will lose if there is a total loss.

FCIC is proposing to add a new section 2 to clarify that the option is only available for those insured crops that contain option coverage levels on the actuarial documents. This change is needed because the option will not be available in all areas where it was available as a pilot program. Therefore, producers must check the actuarial documents to see if the option is available in their area. The subsequent sections are redesignated as sections 3 through 7.

FCIC is proposing to revise redesignated section 4 to clarify that the option is now continuous and will remain in effect for as long as the producer continues to have a MPCI policy in effect for the insured crop, an option coverage level percent is contained in the actuarial documents, or it is cancelled by the producer or terminated by the approved insurance provider on or before the cancellation or termination date, as applicable.

FCIC is proposing to revise redesignated section 6 to clarify the coverage provided under the option. It effectively offers coverage that causes a portion of the deductible to disappear under the MPCI portion of the policy once the deductible has been met. However, the deductible disappears proportional to the amount of the loss, less the deductible required for the option coverage level (cannot exceed 85 percent, which creates a secondary deductible to 15 percent). This means that if the loss were 100 percent, the producer would receive an indemnity under the MPCI policy and option equal to the option coverage level times the total value of the crop (In the above stated example, this would equate to $16,000, a complete loss) but if the losses were less than 100 percent, less of the deductible is covered.

FCIC is proposing to add a new section 6(c) that clarifies that an indemnity is not payable under this option until after the underlying MPCI deductible (1—MPCI coverage level) is met, triggering an MPCI indemnity. The previous redesignated sections 6(c) and (d) are now designated as sections 6(d) and (e).

FCIC is proposing to revise the indemnity formula in section 7 to remove the references to determining the option dollar amount of insurance and the option coverage factor because FCIC is proposing to revise the definition of option dollar amount of insurance to include a means to calculate the amount.

FCIC also made technical changes for clarity but such changes do not change the coverage provided under the option.

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by adding 7 CFR 457.172 (Coverage Enhancement Option) to make the CEO a permanent option, thus remaining available for Texas Citrus Tree policyholders and to allow for use in other appropriate crop programs as determined by FCIC. The proposed changes are as follows:

**List of Subjects in 7 CFR Part 457**

Crop insurance, Coverage enhancement option.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations effective for the 2008 and succeeding crop years, to read as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Section 457.172 is added to read as follows:

### § 457.172 Coverage enhancement option insurance provisions.

This option is available for the 2008 and succeeding years.

The Coverage Enhancement Option insurance provisions for the 2008 and succeeding crop years are as follows:

FCIC policies:

United States Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate Title for Insurance Provider)

Both FCIC and reinsured policies:

Coverage Enhancement Option Insurance Provisions

**1. Definitions**

*MPCI*—Multiple Peril Crop Insurance, the plan of insurance offered by the Federal Crop Insurance Corporation as published at 7 CFR part 457.

*MPCI coverage level*—The coverage level percentage you selected in the underlying MPCI policy to which this option is attached.

*MPCI dollar amount of insurance*—The value of the insurance coverage for the unit provided under the MPCI policy (the amount of insurance selected by you for dollar or similar plans of insurance or the amount determined by multiplying the production guarantee (per acre) times the price election, times the number of acres in the unit, times the MPCI coverage level you selected).

*MPCI indemnity*—The indemnity determined for each unit under the MPCI policy to which this option is attached, not including replant and prevented planting indemnities or any indemnity payable under this option.

*MPCI indemnity factor*—A factor determined by dividing the MPCI indemnity by the MPCI dollar amount of insurance for a unit. This factor is used to ensure that the indemnity paid under this option is proportional to the amount of loss and indemnity paid under the MPCI policy.

*Option Dollar Amount of Insurance*—The value of the additional insurance coverage for the unit provided by this option, which is determined by multiplying the option coverage level by the total value of the crop and subtracting the MPCI dollar amount of insurance.

*Option Coverage Level*—The coverage level percentage selected under this option. This percentage effectively becomes the coverage level under the MPCI policy when the losses under such policy exceed the deductible and an indemnity is owed.

*Total value of the insured crop*—The value of the crop that is determined by dividing the MPCI dollar amount of insurance by the MPCI coverage level.

2. This option is only available for insured crops that contain an option coverage level percent in the actuarial documents.

3. To be eligible for this coverage, you must have an MPCI policy in force for the insured crop (or for citrus fruit, citrus trees, and stone fruit, as applicable, the insured type) in accordance with the applicable Crop Provisions for the insured crop. You must choose an option coverage level percentage that is shown in the actuarial documents, by the sales closing date.

4. You must elect this option in writing on or before the crop sales closing date for the crop insured. This option is continuous and will remain in effect for as long as you continue to have a MPCI policy in effect for the insured crop, an option coverage level percent is contained in the actuarial documents, or it is cancelled by you or terminated by us on or before the cancellation or termination date, as applicable.

5. This option is not available if you have chosen the Catastrophic Risk Protection (CAT) level of coverage or a price election less than 100 percent.

6. If you elect this option and a MPCI indemnity is paid on any unit, your deductible will disappear in proportion to the amount of such loss and indemnity paid. For example, if you selected a 50 percent MPCI coverage level, select an 85 percent option coverage level, and had a total loss, the amount of indemnity paid under both the MPCI policy and this option would be equal to 85 percent of the total value of the insured crop. The amount of the additional indemnity and related terms and conditions are described below:

(a) All acreage of the insured crop insured under your MPCI policy will be covered under this option;

(b) The amount of any replant or prevented planting payment that is payable under the MPCI policy will not be affected by this option.

(c) An indemnity will be payable under this option only after the underlying MPCI deductible is met and an MPCI indemnity is paid.

(d) The total indemnity for each unit (MPCI coverage plus this option) cannot exceed the combination of both the MPCI and option dollar amounts of insurance.

(e) Your premium will be determined by:

(i) Totaling the MPCI dollar amount of insurance and the option dollar amount of insurance; and

(ii) Multiplying the result of section 6(e)(i) by the premium rate for the insured crop applicable to your MPCI coverage level.

7. In addition to the settlement of claim section for the applicable Crop Provisions, your indemnity will be computed on a unit basis as follows:

(a) Determine the MPCI indemnity factor;

(b) Multiply the MPCI indemnity factor times the Option Dollar Amount of Insurance to determine the indemnity under this option.

*Example:* Assume a policy with one unit; an MPCI coverage level of 50 percent and an option coverage level of 85 percent; 100% share; a $120,000 MPCI dollar amount of insurance; and a $40,000 payable indemnity under the MPCI portion of the policy.

Your indemnity would be calculated for each unit as follows:

(a) $40,000 loss ÷ by $120,000 MPCI dollar amount of insurance = .33333 MPCI indemnity factor.

(b) .33333 MPCI indemnity factor × $84,000 option dollar amount of insurance = $28,000 indemnity under this option.

**Note:** The total unit indemnity is $68,000 ($40,000 MPCI indemnity plus $28,000 option indemnity)

Signed in Washington, DC, on May 30, 2007.

**Eldon Gould,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. E7–10825 Filed 6–5–07; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28355; Directorate Identifier 2007–NM–062–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require inspecting ground blocks GD261 and GD264 for corrosion, measuring the electrical bond resistance between the ground blocks and the airplane structure, separating the ground wires for the fuel boost pump circuit between ground blocks GD261 and GD264, and doing corrective actions if necessary. This proposed AD results from a report of random flashes of the six fuel pump low pressure lights and intermittent operation of the fuel boost pumps. We are proposing this AD to prevent the simultaneous malfunction of all six fuel boost pumps, which could cause the engines to operate on suction feed and potentially flame out.

**DATES:** We must receive comments on this proposed AD by July 23, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

• *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov*

and follow the instructions for sending your comments electronically.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28355; Directorate Identifier 2007–NM–062–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

**Examining the Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We have received a report of random flashes of the six fuel pump low pressure lights and intermittent operation of the fuel boost pumps. This was caused by an electrical ground block with poor continuity to ground. This condition, if not corrected, could cause the engines to operate on suction feed and potentially flame out.

**Relevant Service Information**

We have reviewed Boeing Special Attention Service Bulletin 737–28–1257, dated February 26, 2007. The service bulletin describes procedures for the following actions:

- Inspecting ground blocks GD261 and GD264 for corrosion;
- Measuring the electrical bond resistance between the ground blocks and the airplane structure;
- Separating the fuel boost pump grounds by removing three fuel boost pump ground wires from ground block GD261 and installing them in ground block GD264.
- Repairing corrosion damage; and
- Replacing the ground block with a new one if any corrosion is found or if the electrical bond resistance exceeds 0.001 ohm.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

**FAA's Determination and Requirements of the Proposed AD**

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

There are about 1,871 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| 1 | $80 | None | $80 | 702 | $56,160 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**Boeing:** Docket No. FAA–2007–28355; Directorate Identifier 2007–NM–062–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by July 23, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–28–1257, dated February 26, 2007.

**Unsafe Condition**

(d) This AD results from a report of random flashes of the six fuel pump low pressure lights and intermittent operation of the fuel boost pumps. We are issuing this AD to prevent the simultaneous malfunction of all six fuel boost pumps, which could cause the engines to operate on suction feed and potentially flame out.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspection**

(f) Within 24 months after the effective date of this AD: Do a general visual inspection of ground blocks GD261 and GD264 for corrosion, measure the electrical bond resistance, and separate the ground wires for the fuel boost pump circuit between ground blocks GD261 and GD264. Do these actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1257, dated February 26, 2007. Do applicable corrective actions before further flight in accordance with the service bulletin.

**Alternative Methods of Compliance (AMOCs)**

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–10878 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28353; Directorate Identifier 2007–NM–065–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace LP Model Galaxy Airplanes and Model Gulfstream 200 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 6, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Streamlined Issuance of AD**

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet

our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28353; Directorate Identifier 2007–NM–065–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The Civil Aviation Authority of Israel (CAAI), which is the aviation authority for Israel, has issued Israeli Airworthiness Directive 21–07–01–01, dated February 20, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. The corrective action includes replacing the pressurization safety valve, part number 103842–3. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Gulfstream has issued Service Bulletin 200–21–308, dated February 23, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 10 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $5,600, or $800 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.):** Docket No. FAA–2007–28353; Directorate Identifier 2007–NM–065–AD.

**Comments Due Date**

(a) We must receive comments by July 6, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Gulfstream Model Galaxy airplanes and Model Gulfstream 200 airplanes, serial numbers 101 through 104, 109, 110, and 118, certificated in any category.

**Subject**

(d) Air Conditioning.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

During the manufacturing process of the Poppet Covers of the Pressurization Safety Valves, burrs that could damage the Valve Diaphragms were not removed. The damage may eventually cause faulty operation of the relief valves resulting in an unsafe condition when combined with additional failures. The serial numbers of the defective valves and the affected aircraft were identified.

The unsafe condition is damage and subsequent failure of the safety relief valves, which could result in rapid decompression of the airplane. The corrective action includes replacing the pressurization safety valve, part number 103842–3.

**Actions and Compliance**

(f) Unless already done, do the following actions. Within 500 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace the pressurization safety valve, part number 103842–3, according to Gulfstream Service Bulletin 200–21–308, dated February 23, 2007.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to MCAI Israeli Airworthiness Directive 21–07–01–01, dated February 20, 2007; and Gulfstream Service Bulletin 200–21–308, dated February 23, 2007; and Honeywell Service Bulletin 103842–21–4126, dated December 5, 2006; for related information.

Issued in Renton, Washington, on May 25, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–10869 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

**SUMMARY:** The FAA is revising an earlier proposed airworthiness directive (AD) for all McDonnell Douglas Model 717–200 airplanes. The original NPRM would have required inspecting the power conversion distribution unit (PCDU) to determine its part number, and modifying certain PCDUs. The original NPRM was prompted by reports of failed PCDUs, the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. This action revises the original NPRM by reidentifying the part number reference for the proposed corrective action. We are proposing this supplemental NPRM to prevent the loss of an electrical bus due to PCDU failure, resulting in the loss of all flight displays for an unacceptable time period, and consequent emergency landing.

**DATES:** We must receive comments on this supplemental NPRM by July 2, 2007.

**ADDRESSES:** Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Long Beach Division, Dept. C1–L5A (D800–0024), for service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Thomas Phan, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5342; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an

association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

**Examining the Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

**Discussion**

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for all McDonnell Douglas Model 717–200 airplanes. The original NPRM was published in the **Federal Register** on October 12, 2006 (71 FR 60080). The original NPRM proposed to require inspecting the power conversion distribution unit (PCDU) to determine its part number, and modifying certain PCDUs.

**Comments**

We have considered the following comments on the original NPRM.

**Request To Revise Part Number Reference**

Boeing and AirTran Airways note that the original NPRM incorrectly identifies P/N 762904E as the part number needing the corrective actions, but P/N 762904E (and any part number above 762904E) is the final configuration after all corrective actions are taken.

Since we issued the original NPRM, we became aware of this error. We revised paragraphs (f)(1) and (f)(2) in this supplemental NPRM to correctly identify the affected part numbers.

**Request To State Intent To Incorporate Service Information by Reference During NPRM Stage**

The Modification and Replacement Parts Association (MARPA) requests that, during the NPRM stage of AD rulemaking, the FAA state its intent to incorporate by reference (IBR) any relevant service information. MARPA states that, without such a statement in the NPRM, it is unclear whether the relevant service information will be incorporated by reference in the final rule.

We do not concur with the commenter's request. When we refer to certain service information in a proposed AD, the public can assume we intend to IBR that service information, as required by the Office of the Federal Register. No change to this supplemental NPRM is necessary in regard to the commenter's request.

**Request To IBR Service Information During NPRM**

This same commenter requests that we IBR the service information during the NPRM phase of rulemaking to permit the public to review and comment on the entire proposed action. The commenter notes that IBR is intended to avoid the unnecessary publication of documents already available to affected individuals. But the commenter expresses concern that distribution may not reach certain individuals directly responsible for the AD's accomplishment, including specialty shops, which now perform the majority of aircraft maintenance, and owners that are financing or leasing institutions.

We disagree that documents should be incorporated by reference during the NPRM phase of rulemaking. The Office of the Federal Register (OFR) requires that documents that are necessary to accomplish the requirements of the AD be incorporated by reference during the final rule phase of rulemaking. The final rule will incorporate by reference the document necessary for the accomplishment of the actions required in the AD. Further, we point out that, while documents that are incorporated by reference do become public information, they do not lose their copyright protection. For that reason, we advise the public to contact the manufacturer to obtain copies of the referenced service information. No change to the supplemental NPRM is necessary in response to this comment.

**Request To Post Service Information on DMS Before Final Rule**

This same commenter further requests that we post the service bulletins on the Department of Transportation's Docket Management System (DMS) to make the service bulletins available to the public before we issue the final rule.

We are currently in the process of reviewing issues surrounding the posting of service bulletins on the DMS as part of an AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised. No change to this supplemental NPRM is necessary in response to this comment.

**Request To Clarify Affected Parts**

MARPA notes that the original NPRM would encompass both the original equipment manufacturer (OEM) and parts manufacturer approval (PMA) editions of the parts. And, ''[p]ursuant to FAR 45.15 parts approved under 21.303 will have the term 'FAA–PMA' included as part of the part numbering scheme.'' But to resolve doubt and confusion when such parts are encountered in the field, MARPA requests that we explain that some parts may be marked ''FAA–PMA,'' and that the action would apply irrespective of the differences in part marking.

The FAA recognizes the need for standardization of this issue and is currently in the process of reviewing issues that address the use of PMAs in ADs at the national level. However, the Transport Airplane Directorate considers that to delay this particular AD action would be inappropriate, since we have determined that an unsafe condition exists and that replacement of certain parts must be accomplished to ensure continued safety. Therefore, no change has been made to this supplemental NPRM regarding this issue.

**Clarification of Unsafe Condition**

We have clarified certain language in the Summary and paragraph (d) of this supplemental NPRM to more accurately describe the unsafe condition that prompted this action.

**Clarification of Alternative Method of Compliance (AMOC) Paragraph**

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

**FAA's Determination and Proposed Requirements of the Supplemental NPRM**

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

**Costs of Compliance**

There are about 137 airplanes of the affected design in the worldwide fleet and 108 U.S.-registered airplanes. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The total fleet cost could be as high as $417,312.

ESTIMATED COSTS FOR PRIMARY ACTIONS

| Boeing Service Bulletin | Work hours | Labor rate per hour | Parts cost | Cost per airplane |
|---|---|---|---|---|
| Part number identification | 1 | $80 | $0 | $80 |
| Modification (717–24A0028) | 12 | 80 | 0 | 960 |

ESTIMATED COSTS FOR CONCURRENT ACTIONS

| Hamilton Sundstrand Service Bulletin | Work hours | Labor rate per hour | Parts cost | Cost per airplane |
|---|---|---|---|---|
| 40EGS22P–24–3 | 6 | $80 | $154 per airplane | $634 |
| 40EGS22P–24–4 | 3 | 80 | 0 | 240 |
| 40EGS22P–24–6 | 3 | 80 | 0 | 240 |
| 40EGS22P–24–7 | 1 per PCDU | 80 | 10 per PCDU, maximum 3 PCDUs per airplane. | 110 (maximum). |
| 40EGS22P–24–8 | 10 | 80 | 0 | 800 |
| 40EGS22P–24–9 | 10 | 80 | 0 | 800 |

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

**McDonnell Douglas:** Docket No. FAA–2006–26043; Directorate Identifier 2005–NM–010–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by July 2, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all McDonnell Douglas Model 717–200 airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by reports of failed power conversion distribution units (PCDUs), the loss of an electrical bus, and the presence of a strong electrical burning odor in the flight deck and forward cabin. We are issuing this AD to prevent the loss of an electrical bus due to PCDU failure, resulting in the loss of all flight displays for an unacceptable time period, and consequent emergency landing.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Identification of PCDU Part Number**

(f) Within 20 months after the effective date of this AD, inspect the PCDU to determine its part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number can be conclusively determined from that review.

(1) If the part number is below 762904E, do the actions specified in paragraphs (g) and (h) of this AD.

(2) If the part number is 762904E or higher, no further work is required by this AD.

**Modification**

(g) Within 20 months after the effective date of this AD, modify the PCDU in accordance with Boeing Alert Service Bulletin 717–24A0028, Revision 1, dated December 20, 2005. A modification done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 717–24A0028, dated November 24, 2004, is acceptable for compliance with the requirements of this paragraph.

**Note 1:** Boeing Alert Service Bulletin 717–24A0028 refers to Hamilton Sundstrand Service Bulletin 40EGS22P–24–10, Revision 1, dated May 11, 2005, as an additional source of service information for the modification.

**Concurrent Requirements**

(h) Before or concurrently with the modification required by paragraph (g) of this AD, do the applicable actions specified in Table 1 of this AD.

TABLE 1.—CONCURRENT SERVICE BULLETINS

| Do the following— | In accordance with Hamilton Sundstrand Service Bulletin— |
|---|---|
| Rework the transformer rectifier unit assembly (TRU) ..... Rework the W3 wiring harness assembly to install direct lead wires to the TRU. Add a ground wire to the TRU transformer. Add an insulated spacer to the PCDU top cover. | 40EGS22P–24–3, dated June 30, 2000. |
| Install new PCDU 186 firmware ..... | 40EGS22P–24–4, Revision 1, dated January 2, 2002. |
| Install new PCDU 186 firmware ..... | 40EGS22P–24–6, dated July 25, 2002. |
| Modify the top cover of the PCDU ..... | 40EGS22P–24–7, dated September 3, 2003. |
| Modify printed wiring board (PWB) assemblies A4 and A5 ..... | 40EGS22P–24–8, dated September 4, 2003. |
| Check and apply torque seal to fasteners on the TRU assembly and to PCDU internal fasteners, as applicable. | |
| Modify the PWB assembly A4 ..... | 40EGS22P–24–9, dated November 19, 2003. |

**Credit for Accomplishment of Earlier Service Bulletin**

(i) Installation of new PCDU 186 firmware before the effective date of this AD in accordance with Hamilton Sundstrand Service Bulletin 40EGS22P–24–4, dated April 26, 2001, is acceptable for compliance with the corresponding requirements of paragraph (h) of this AD.

**Alternative Methods of Compliance (AMOCs)**

(j)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Issued in Renton, Washington, on May 25, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–10864 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2007–28358; Directorate Identifier 2007–NM–019–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A321 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

This condition could result in separation of the wheel and consequent reduced controllability of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** We must receive comments on this proposed AD by July 6, 2007.

**ADDRESSES:** You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

**Examining the AD Docket**

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Streamlined Issuance of AD**

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

**Comments Invited**

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28358; Directorate Identifier 2007–NM–019–AD'' at the beginning of your comments. We specifically invite

comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0328, dated October 23, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

The unsafe condition could result in separation of the wheel and consequent reduced controllability of the airplane. The MCAI mandates inspecting the main landing gear (MLG) wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) and, if necessary, repair of the MLG wheel assembly. You may obtain further information by examining the MCAI in the AD docket.

**Relevant Service Information**

Messier-Bugatti has issued Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of This Proposed AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

**Costs of Compliance**

Based on the service information, we estimate that this proposed AD would affect about 34 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $16,320, or $480 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new AD:

**Airbus:** Docket No. FAA–2007–28358; Directorate Identifier 2007–NM–019–AD.

**Comments Due Date**

(a) We must receive comments by July 6, 2007.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Airbus Model A321 series airplanes; all certified models; certificated in any category; equipped with Messier-Goodrich S.A. or Goodrich-Messier Inc., main landing gear (MLG) wheel assemblies having part number (P/N) C20500000 or P/N C20452000.

**Subject**

(d) Landing gear.

**Reason**

(e) The mandatory continuing airworthiness information (MCAI) states:

Some operators have reported wheel corrosion, mainly under the heat-shield overlap area. In some cases a circular crack initiated from a corrosion pit. When the crack is initiated under the bead seat, it does not lead to tire pressure loss, and can cause a flange separation as experienced by few operators.

This condition could result in separation of the wheel and consequent reduced controllability of the airplane. The MCAI

mandates inspecting the MLG wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) and, if necessary, repair of the MLG wheel assembly.

**Actions and Compliance**

(f) Unless already done, do the following actions.

(1) At the next scheduled tire change, but no later than 6 months after the effective date of this AD: Inspect the MLG wheel assembly for discrepancies (corrosion, damage, cracks, and loose or missing heat shield spacers) in accordance with the instructions of Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006. Repeat the inspection thereafter at intervals not to exceed every tire change or 6 months, whichever is earlier.

(2) If any discrepancy is found: Before further flight, repair the MLG wheel assembly in accordance with the instructions of Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006.

**FAA AD Differences**

**Note:** This AD differs from the MCAI and/or service information as follows: The MCAI specifies an imprecise compliance time for inspecting the MLG wheel assembly—i.e., ''at each tire change.'' This AD would require inspecting the MLG wheel assembly at the next scheduled tire change, but no later than 6 months after the effective date of the AD; and thereafter at intervals not to exceed every tire change or 6 months, whichever is earlier.

**Other FAA AD Provisions**

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 98057–3356, telephone (425) 227–2141; fax (425) 227–1149. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

**Related Information**

(h) Refer to EASA Airworthiness Directive 2006–0328, dated October 23, 2006; and Messier-Bugatti Special Inspection Service Bulletin C20452–32–3254, Revision 2, dated September 5, 2006, for related information.

Issued in Renton, Washington, on May 25, 2007.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E7–10865 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 73

**[Docket No. FAA–2006–26192; Airspace Docket No. 06–ASO–11]**

**RIN 2120–AA66**

## Proposed Modification and Establishment of Restricted Areas and Other Special Use Airspace, Adirondack Airspace Complex; Fort Drum, NY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to restructure the restricted areas located in the vicinity of Fort Drum, NY. The Air National Guard (ANG) proposed to redesign the airspace, referred to as the Adirondack Airspace Complex, by making a minor modification to the ceiling of existing restricted area R–5201, and by establishing two new restricted areas: R–5202A and R–5202B. In addition, the ANG proposes to redesign the Military Operations Areas (MOA) associated with the Fort Drum restricted areas. MOAs are not regulatory airspace, but are established administratively. Because the MOAs form an integral part of the Adirondack Airspace Complex, the FAA is also seeking comment on the proposed MOA changes through this NPRM. The ANG proposes these airspace changes to provide additional special use airspace (SUA) needed to conduct high altitude, long-range weapons releases and to allow more realistic training in modern tactics to be conducted in the Adirondack Airspace Complex.

**DATES:** Comments must be received on or before August 6, 2007.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2006–26192 and Airspace Docket No. 06–ASO–11, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.* Comments on environmental and land use aspects should be directed to: NGB/A7CVN, Conaway Hall, 3500 Fetchet Ave, Andrews AFB, MD 20762; telephone: (301) 835–8143.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Comments are also invited on the nonregulatory MOA part of this proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2006–26192 and Airspace Docket No. 06–ASO–11) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2006–26192 and Airspace Docket No. 06–ASO–11.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the System Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**Background**

The Adirondack Airspace Complex consists of one restricted area and nine MOAs in the vicinity of Fort Drum, NY. Restricted areas are regulatory airspace designations, under Title 14 Code of Federal Regulations (CFR) part 73, which are established to confine or segregate activities considered hazardous to non-participating aircraft. A MOA is a non-rulemaking type of SUA established to separate or segregate certain non-hazardous military flight activities from aircraft operating in accordance with instrument flight rules (IFR), and to identify for visual flight rules (VFR) pilots where those activities are conducted. IFR aircraft may be routed through an active MOA only when air traffic control can provide approved separation from the MOA activity. VFR pilots are not restricted from flying in an active MOA, but are advised to exercise caution while doing so.

Unlike restricted areas, which are designated through rulemaking procedures, MOAs are non-rulemaking airspace areas that are established administratively and published in the National Flight Data Digest. Normally, MOA proposals are not published in a NPRM, but instead, are advertised for public comment through a nonrule circular that is distributed by an FAA Service Center office to aviation interests in the affected area. However, when a non-rulemaking action is connected to a rulemaking action, FAA procedures allow for the non-rulemaking proposal to be included in the NPRM. In such cases, the NPRM replaces the nonrule circularization requirement. Because the proposed MOAs are an integral part of the Adirondack Airspace Complex, they are being included in this NPRM.

The existing SUA is inadequate to accommodate the advanced air-to-air, air-to-ground, and threat avoidance training profiles that are essential for aircrews to achieve and maintain combat readiness. The proposed MOA realignments and restricted area modifications would provide greater tactical training options to match current real-world taskings and threats. In addition, the proposed changes would reduce longstanding environmental/noise burdens associated with the current SUA configuration by more evenly distributing activities within the Complex. The proposed SUA changes are described in the following sections.

**Proposed MOA Changes**

The New York ANG has proposed to redesign and expand the MOA airspace in the vicinity of Fort Drum, NY (see attached graphic). The purpose of this MOA redesign is to improve flight safety, enable more efficient real-time, joint-use management of the airspace, decrease or balance environmental impacts of the current MOA configuration, and permit more realistic training in the Adirondack Airspace Complex.

Most of the redesigned MOAs would be contained within airspace that is already designated as MOAs. However, the new MOA configuration would include additional airspace, both laterally and vertically, beyond the current MOA boundaries. The ANG proposed to cancel the nine existing MOAs at Fort Drum (Drum 1 MOA, Drum 2 MOA, Falcon 1 MOA, Falcon 3 MOA, Syracuse 1 MOA, Syracuse 2A MOA, Syracuse 2B MOA, Syracuse 3 MOA, and Syracuse 4 MOA), and replace them with 12 new MOAs as follows:

**1. Adirondack A MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°30′00″ N., long. 75°20′00″ W.; to lat. 44°36′00″ N., long. 75°03′00″ W.; to lat. 44°30′00″ N., long. 75°03′00″ W.; to the point of beginning.

*Altitudes.* 6,000 feet MSL to but not including FL 180.

**2. Adirondack B MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°19′00″ N., long. 75°37′05″ W.; to lat. 44°26′30″ N., long. 75°30′00″ W.; to lat. 44°30′00″ N., long. 75°20′00″ W.; to lat. 44°30′00″ N., long. 75°03′00″ W.; to lat. 44°27′30″ N., long. 75°03′00″ W.; to lat. 44°20′20″ N., long. 75°10′30″ W.; to lat. 44°15′09″ N., long. 75°30′42″ W.; to lat. 44°16′07″ N., long. 75°32′41″ W.; to the point of beginning; excluding R–5202B when active.

*Altitudes.* 2,500 feet MSL to but not including FL 180.

**3. Adirondack C MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°15′09″ N., long. 75°30′42″ W.; to lat. 44°20′20″ N., long. 75°10′30″ W.; to lat. 44°27′30″ N., long. 75°03′00″ W.; to lat. 44°06′00″ N., long. 75°03′00″ W.; to lat. 44°06′00″ N., long. 75°28′49″ W.; to lat. 44°07′10″ N., long. 75°26′49″ W.; to lat. 44°11′24″ N., long. 75°22′59″ W.; to the point of beginning; excluding R–5202B when active.

*Altitudes.* 100 feet AGL to but not including FL 180.

**4. Adirondack D MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°11′50″ N., long. 75°43′53″ W.; to lat. 44°19′00″ N., long. 75°37′05″ W.; to lat. 44°16′07″ N., long. 75°32′41″ W.; to lat. 44°10′50″ N., long. 75°38′59″ W.; to lat. 44°09′34″ N., long. 75°40′00″ W.; to the point of beginning; excluding R–5202B when active.

*Altitudes.* 5,000 feet MSL to but not including FL 180.

**5. Carthage East MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°01′05″ N., long. 75°37′14″ W.; to lat. 44°06′00″ N., long. 75°28′49″ W.; to lat. 44°06′00″ N., long. 75°03′00″ W.; to lat. 43°53′00″ N., long. 75°03′00″ W.; to lat. 43°53′00″ N., long. 75°35′00″ W.; to the point of beginning.

*Altitudes.* 100 feet MSL to but not including FL 180.

**6. Carthage West MOA, NY [New]**

*Boundaries.* Beginning at lat. 43°44′00″ N., long. 75°52′00″ W.; to lat. 44°11′50″ N., long. 75°43′53″ W.; to lat. 44°09′34″ N., long. 75°40′00″ W.; to lat. 44°06′55″ N., long. 75°42′09″ W.; to lat. 44°03′20″ N., long. 75°40′49″ W.; to lat. 44°01′05″ N., long. 75°37′14″ W.; to lat. 43°53′00″ N., long. 75°35′00″ W.; to the point of beginning.

*Altitudes.* 6,000 feet MSL to but not including FL 180.

**7. Cranberry MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°36′00″ N., long. 75°03′00″ W.; to lat. 44°36′00″ N., long. 74°35′00″ W.; to lat. 44°15′00″ N., long. 74°35′00″ W.; to lat. 43°53′00″ N., long. 75°03′00″ W.; to the point of beginning.

*Altitudes.* 500 feet AGL to but not including 6,000 feet MSL.

**8. Drum MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°14′49″ N., long. 75°49′00″ W.; to lat. 44°19′00″ N., long. 75°44′30″ W.; to lat. 44°19′00″ N., long. 75°37′00″ W.; to lat. 44°16′07″ N., long. 75°32′41″ W.; to lat. 44°10′50″ N., long. 75°38′59″ W.; to lat. 44°09′34″ N., long. 75°40′00″ W.; to the point of beginning.

*Altitudes.* 500 feet AGL to but not including 5,000 feet MSL.

**9. Lowville MOA, NY [New]**

*Boundaries.* Beginning at lat. 43°44′00″ N., long. 75°52′00″ W.; to lat. 43°53′00″ N., long. 75°35′00″ W.; to lat. 43°53′00″ N., long. 75°03′00″ W.; to lat. 43°30′00″ N., long. 75°03′00″ W.; to lat. 43°30′00″ N., long. 75°52′00″ W.; to the point of beginning.

*Altitudes.* 100 feet AGL to but not including FL 180.

**10. Tupper North MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°36′00″ N., long. 75°03′00″ W.; to lat. 44°36′00″ N., long. 74°21′00″ W.; to lat. 44°14′00″ N., long. 74°21′00″ W.; to lat. 44°06′00″ N., long. 74°12′00″ W.; to lat. 43°53′00″ N., long. 74°12′00″ W.; to lat. 43°53′00″ N., long. 75°03′00″ W.; to the point of beginning.

*Altitudes.* May 1–October 31: 8,000 feet MSL to but not including FL 180; November 1–April 30: 6,000 feet MSL to but not including FL 180.

**11. Tupper South MOA, NY [New]**

*Boundaries.* Beginning at lat. 43°53′00″ N., long. 75°03′00″ W.; to lat. 43°53′00″ N., long. 74°12′00″ W.; to lat. 43°40′00″ N., long. 74°12′00″ W.; to lat. 43°30′00″ N., long. 74°21′00″ W.; to lat. 43°30′00″ N., long. 75°03′00″ W.; to the point of beginning.

*Altitudes.* May 1–October 31: 8,000 feet MSL to but not including FL 180; November 1–April 30: 6,000 feet MSL to but not including FL 180.

**12. Tupper East MOA, NY [New]**

*Boundaries.* Beginning at lat. 44°36′00″ N., long. 74°21′00″ W.; to lat. 44°36′00″ N., long. 74°12′00″ W.; to lat. 44°06′00″ N., long. 74°12′00″ W.; to lat. 44°14′00″ N., long. 74°21′00″ W.; to the point of beginning.

*Altitudes.* 10,000 feet MSL to but not including FL 180.

The times of use for all of the proposed MOAs would vary on a seasonal basis. Except for the Cranberry MOA, the proposed MOA times of use are: From May 1–August 31: 0800–1700 Monday–Friday; other times by NOTAM. From September 1–April 30: 0800–2200 Monday–Friday; other times by NOTAM. For the Cranberry MOA, the times of use would be November 1–April 30: 0800–2200 Monday–Friday; other times by NOTAM. The Cranberry MOA would be closed and unavailable for use during the period May 1–October 31.

The controlling agency for all proposed MOAs would be the FAA, Boston Air Route Traffic Control Center (ARTCC). The using agency for the Adirondack A, B, C, and D; Carthage East and West; Cranberry; and Drum MOAs would be the New York ANG, 174th Fighter Wing, Detachment 1 (NY ANG, 174FW/Det 1), Fort Drum, NY. The using agency for the Lowville and Tupper North, South, and East MOAs would be the U.S. Air Force, Northeast Air Defense Sector (NEADS), Rome, NY.

The proposed MOAs were designed to allow for more access to the SUA by civil aviation. During periods when the airspace is not needed for its designated purpose, the airspace would be returned to the controlling agency (Boston ARTCC). The reconfigured MOAs were designed using a building block system which segments the SUA into smaller areas that can be combined and activated for use as needed on a real-time basis. This system provides better airspace management and increased training efficiency by only using the portions of SUA that are needed for specific training events, while the remainder of the complex would be available for civil use.

When not activated, the Carthage MOAs can be used as a transit corridor for nonparticipating aircraft through the center of a normally active MOA complex. For this reason, special emphasis will be placed on activating only the required altitude blocks in order to maintain the area as a viable MOA transit corridor. The Cranberry MOA will be used as a seasonal alternate during November through April, when low altitudes in the Lowville MOA are unusable much of the time due to weather. The Cranberry MOA would be closed during the period May 1 through October 31.

A number of mitigations were incorporated in developing the Tupper MOAs. To alleviate concerns about the potential impact on commercial traffic flows along the southeastern edge of the MOA airspace, the Tupper South MOA was designed as a separate subarea from Tupper North.

This will aid ATC in accommodating traffic overflow to the north of V–496/J–547 and west of V–203/J–570 in the Syracuse, Glens Falls, and Plattsburgh areas. Additionally, creating the Tupper South MOA as a separate area gives ATC the flexibility to cap, raise the floor, or withhold the airspace without shutting down the entire Tupper airspace. This arrangement would allow ATC to implement real-time floor adjustments to accommodate commuter and general aviation traffic underneath the Tupper MOAs (*i.e.*, on V–196) during times when weather or traffic congestion dictate. Also, because the Tupper North and Tupper South MOAs are located entirely over the Adirondack Park, the altitude floors of the Tupper North and Tupper South MOAs would be adjusted on a seasonal basis. From November through April, the Tupper North and South MOA floors would be at 6,000 feet MSL. However, from May through October, when outdoor recreation and general aviation activities in that area are at a peak, the Tupper North and South MOA floors would be raised to 8,000 feet MSL.

In order to minimize the aeronautical and environmental impacts to the Adirondack Regional Airport and the Saranac Lake region, the northeastern part of the Tupper North MOA was subdivided to create the Tupper East MOA with a floor of 10,000 feet MSL.

If approved, the above MOA changes would be published in the National Flight Data Digest for addition to the National Airspace System Database and aeronautical charts.

**Restricted Area Proposal**

The FAA is considering an amendment to 14 CFR part 73 to modify the designated altitudes of existing restricted area R–5201, Fort Drum, NY, and to establish two new restricted areas, R–5202A and R–5202B, at Fort Drum, NY (see attached graphic). These changes are part of the New York ANG's Adirondack Airspace Complex proposal. Specifically, the FAA is proposing a minor change to the designated altitudes for R–5201 by changing the current wording from ''Surface to 23,000 feet MSL,'' to read ''Surface to but not including 23,000 feet MSL.'' This change to R–5201's upper altitude limit would accommodate the establishment of a new restricted area, R–5202A, to be designated immediately above R–5201. R–5201 currently hosts a variety of air-to-ground, air-to-air, and surface-based weapons activities. Those activities will continue with the modified configuration. The new R–5202A would be established directly above using the same lateral boundaries as R–5201. R–5202A would extend from Flight Level (FL) 230 to FL 290. A second new restricted area, R–5202B, would be established adjacent to, and extending approximately 4 nautical miles to the northeast of, the existing R–5201. The designated altitudes for R–5202B would be 6,000 feet MSL to FL 290. The ANG requested these restricted area changes to permit more realistic air-to-ground and weapons delivery tactical training at the Adirondack Range. With these changes, training can be conducted that replicates the conditions and tactics that units are tasked to perform on real-world wartime deployments. Today's technology allows pilots to operate at higher altitudes, and engage targets from far greater ranges, further reducing their exposure to ground threats. The existing restricted area is not large enough to allow this essential high altitude, long-range weapons delivery training to be accomplished at the Adirondack Range.

In combination with this rulemaking restricted area proposal, the FAA is also considering the ANG's nonrulemaking proposal to redesign and expand the

Military Operations Areas in the vicinity of Fort Drum, NY, as described above in the ''Proposed MOA Changes'' section.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

This proposal will be subjected to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

**List of Subjects in 14 CFR Part 73**

Airspace, Prohibited areas, Restricted areas.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

## PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 73.52 [Amended]**

2. § 73.52 is amended as follows:

* * * * *

**1. R–5201 Fort Drum, NY [Amended]**

By removing the current designated altitudes and substituting the following:

*Designated altitudes.* Surface to but not including 23,000 feet MSL.

**2. R–5202A Fort Drum, NY [New]**

Boundaries. Beginning at lat. 44°01′05″ N., long. 75°37′14″ W.; to lat. 44°03′20″ N., long. 75°40′49″ W.; to lat. 44°06′55″ N., long. 75°42′09″ W.; to lat. 44°10′50″ N., long. 75°38′59″ W.; to lat. 44°16′07″ N., long. 75°32′41″ W.; to lat. 44°11′24″ N., long. 75°22′59″ W.; to lat. 44°07′10″ N., long. 75°26′49″ W.; to the point of beginning.

*Designated altitudes.* FL 230 to FL 290.

*Time of designation.* May 1–August 21: 0800–1700, Monday–Friday; other times by NOTAM. September 1–April 30: 0800–2200 local time, Monday–Friday; other times by NOTAM.

*Controlling agency.* FAA, Boston ARTCC.

*Using agency.* NY ANG, 174FW/Det 1, Fort Drum, NY

**3. R–5202B Fort Drum, NY [New]**

*Boundaries.* Beginning at lat. 44°10′18″ N., long. 75°41′18″ W.; to lat. 44°20′32″ N., long. 75°32′04″ W.; to lat. 44°14′00″ N., long. 75°17′00″ W.; to lat. 44°06′00″ N., long. 75°25′10″ W.; to lat. 44°06′00″ N., long. 75°28′49″ W.; to lat. 44°07′10″ N., long. 75°26′49″ W.; to lat. 44°11′24″ N., long. 75°22′59″ W.; to lat. 44°16′07″ N., long. 75°32′41″ W.; to lat. 44°10′50″ N., long. 75°38′59″ W.; to lat. 44°09′34″ N., long. 75°40′00″ W.; to the point of beginning.

*Designated altitudes.* 6,000 feet MSL to FL 290.

*Time of designation.* May 1–August 21: 0800–1700, Monday–Friday; other times by NOTAM. September 1–April 30: 0800–2200 local time, Monday–Friday; other times by NOTAM.

*Controlling agency.* FAA, Boston ARTCC.

*Using agency.* NY ANG, 174FW/Det 1, Fort Drum, NY

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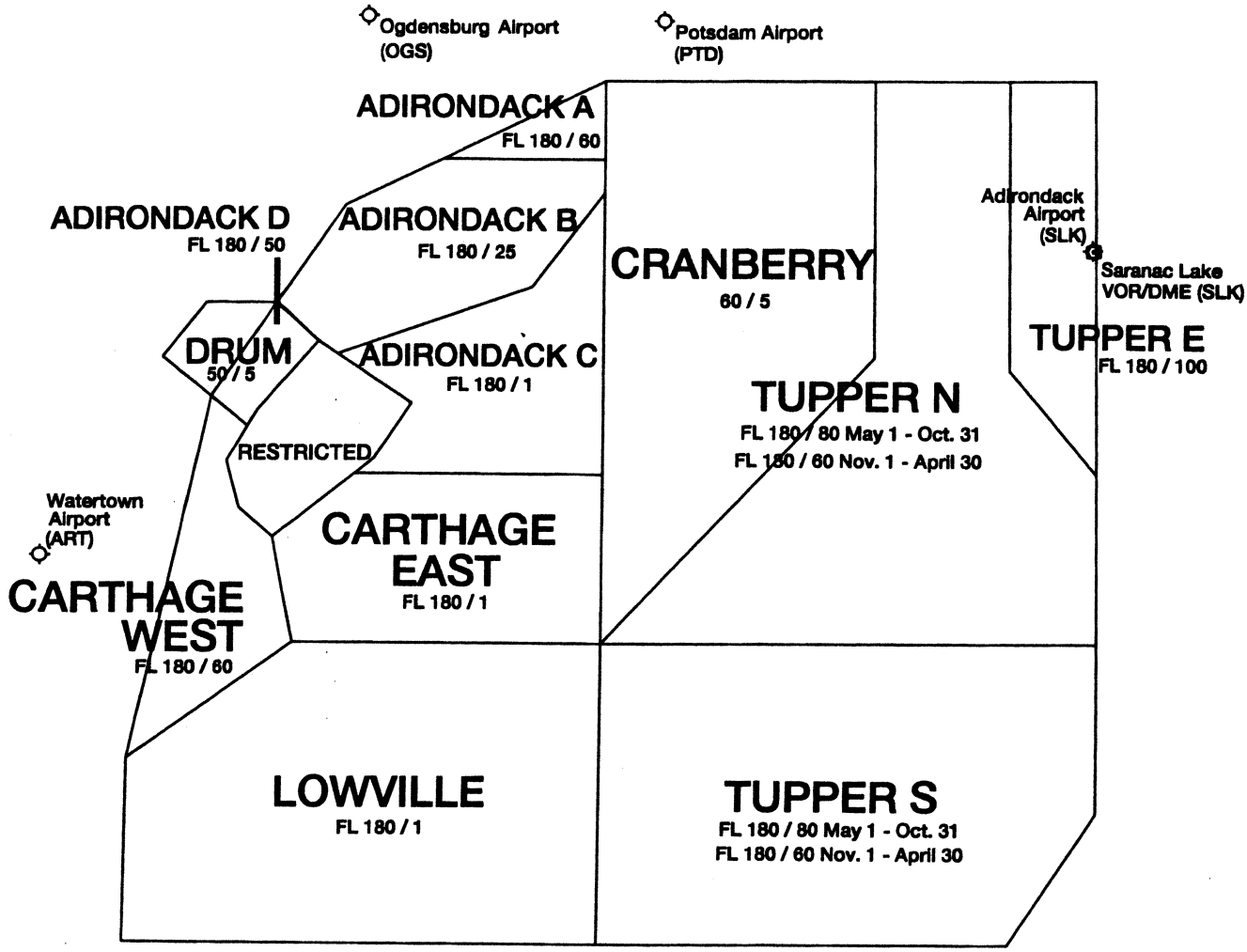
Issued in Washington, DC, on May 18, 2007.

**Edith V. Parish,**

*Manager, Airspace and Rules Group.*

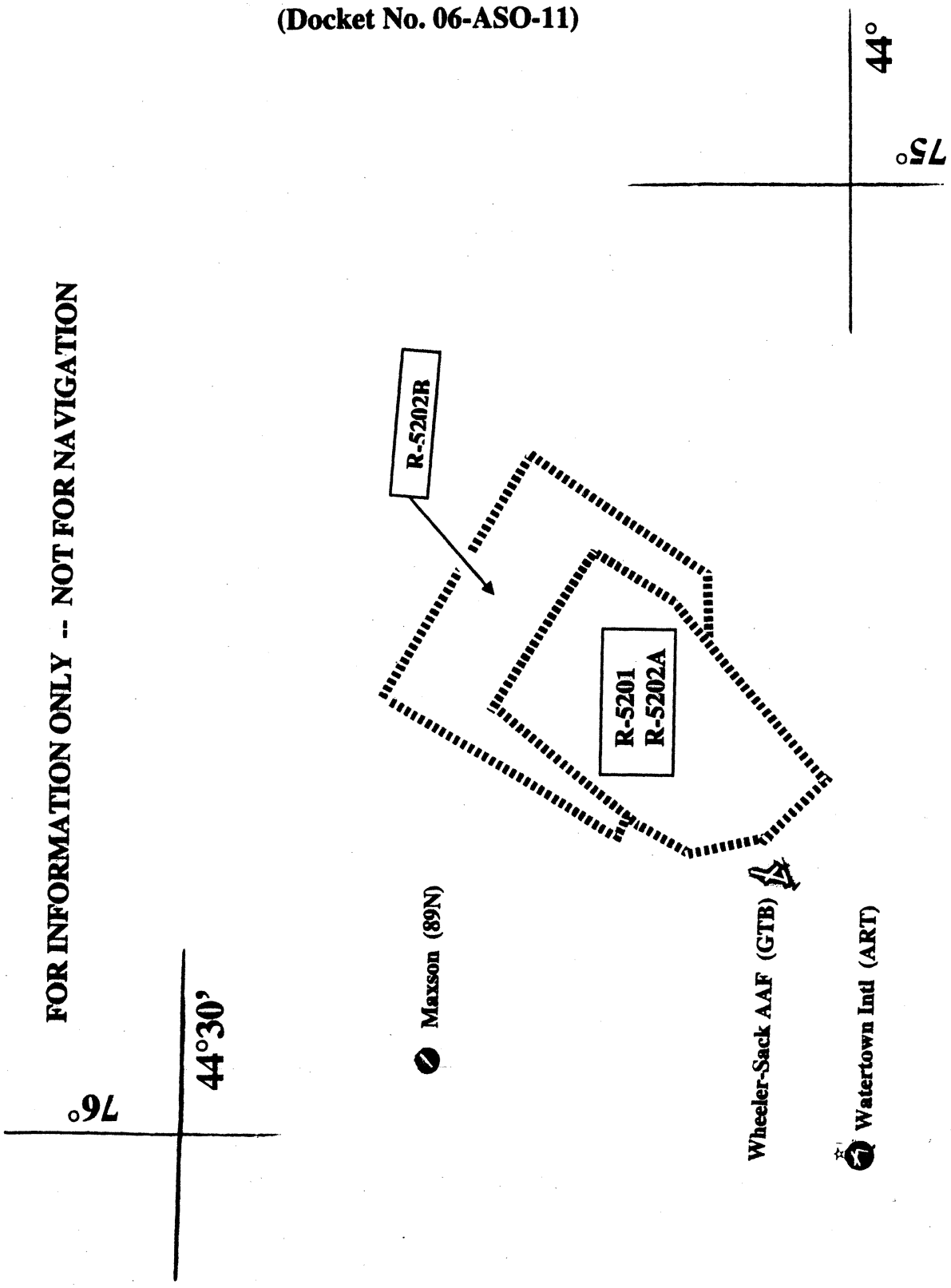
**BILLING CODE 4910–13–P**




# ADIRONDACK, NY ESTABLISH MOAs

NOT FOR NAVIGATION

**PROPOSED MODIFICATION AND ESTABLISHMENT OF RESTRICTED AREAS, FORT DRUM, NY**
**(Docket No. 06-ASO-11)**




[FR Doc. 07–2734 Filed 6–5–07; 8:45 am]
BILLING CODE 4910–13–C

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Parts 260 and 284

**[Docket Nos. RM07–10–000 and AD06–11–000]**

### Transparency Provisions of Section 23 of the Natural Gas Act; Transparency Provisions of the Energy Policy Act; Notice of Extension of Time

May 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Rulemaking; extension of comment period.

**SUMMARY:** On April 19, 2007, the Commission issued a Notice of Proposed Rulemaking (NOPR) revising its regulations in order to facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce. The dates for filing initial and reply comments on the NOPR are being extended at the request of the Texas Pipeline Association.

**DATES:** Comments are due on or before July 11, 2007. Reply comments are due on or before August 9, 2007.

**ADDRESSES:** You may submit comments identified by Docket No. RM07–10–000, by one of the following methods:

• *Agency Web Site: http://ferc.gov.* Follow the instructions for submitting comments via the eFiling link found in the Comment Procedures Section of the preamble.

• *Mail:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426. Please refer to the Comment Procedures Section of the preamble for additional information on how to file paper comments.

**FOR FURTHER INFORMATION CONTACT:**

Stephen J. Harvey (Technical), 888 First Street, NE., Washington, DC 20426, (202) 502–6372, *Stephen.Harvey@ferc.gov.*

Eric Ciccoretti (Legal), 888 First Street, NE., Washington, DC 20426, (202) 502–8493, *Eric.Ciccoretti@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** On May 25, 2007, the Texas Gas Pipeline Association (TPA) filed a motion for an extension of time to file initial and reply comments in response to the Notice of Proposed Rulemaking (NOPR) issued April 19, 2007, in the above-referenced proceeding. 72 FR 20791 (Apr. 26, 2007), FERC. Stats. and Regs. ¶ 32,614 (2007). The motion states that TPA and its members require additional time in order to fully consider the implications of the NOPR, to prepare meaningful comments and to develop material for the record to respond to the numerous requests for specific information in the NOPR.

Upon consideration, notice is hereby given that an extension of time for filing initial comments on the NOPR is granted to and including July 11, 2007. Reply comments should be filed on or before August 9, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10803 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF JUSTICE

### 28 CFR Part 26

**[Docket No. OJP (DOJ)–1464; AG Order No. 2881–2007]**

**RIN 1121–AA74**

### Office of the Attorney General; Certification Process for State Capital Counsel Systems

**AGENCY:** Office of the Attorney General, Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The USA PATRIOT Improvement and Reauthorization Act of 2005 instructs the Attorney General to promulgate regulations to implement certification procedures for States seeking to qualify for the expedited Federal habeas corpus review procedures in capital cases under chapter 154 of Title 28, United States Code. The procedural benefits of chapter 154 are available to States that establish a mechanism for providing counsel to indigent capital defendants in State postconviction proceedings that satisfies certain statutory requirements. This proposed rule would carry out the Act's requirement of issuing regulations for the certification procedure.

**DATES:** *Comment date:* Comments must be submitted on or before August 6, 2007.

**ADDRESSES:** Please address all comments regarding these proposed regulations, by U.S. mail, to: Kim Ball Norris, Senior Policy Advisor for Adjudication, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531; by telefacsimile (fax), to: (202) 307–0036 or by e-mail, to: *OJP_Fed_Reg_Comments@usdoj.gov*. To ensure proper handling, please reference OJP Docket No. 1464 on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov,* and you may also comment by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include OJP Docket No. 1464 in the subject box.

**SUPPLEMENTARY INFORMATION:** Public Law 109–177, the USA PATRIOT Improvement and Reauthorization Act of 2005, (''the Act'') was signed into law on March 9, 2006. Section 507 of that Act amends chapter 154 of Title 28 of the United States Code. Chapter 154 offers procedural benefits in Federal habeas corpus review to States that go beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by providing counsel also to capital defendants in State postconviction proceedings. The chapter 154 procedures include special provisions relating to stays of execution (28 U.S.C. 2262), the time for filing Federal habeas corpus applications (28 U.S.C. 2263), the scope of Federal habeas corpus review (28 U.S.C. 2264), and time limits for Federal district courts and courts of appeals to determine habeas corpus applications and related appeals (28 U.S.C. 2266). See 152 Cong. Rec. S1620, S1624–28 (daily ed., Mar. 2, 2006) (remarks of Sen. Kyl) (explanation of procedural benefits to States under chapter 154); 141 Cong. Rec. S4590, S4590–92 (daily ed., Mar. 24, 1995) (remarks of Sen. Specter) (explaining the historical problem of capital habeas delay motivating the enactment of habeas reforms).

Although chapter 154 has been in place since the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132), the determination that a State was eligible for the procedural benefits of chapter 154 had been left to the Federal court of appeals for the circuit in which the State is located. The Act amended sections 2261(b) and 2265 of title 28 to assign responsibility for chapter 154 certification to the Attorney General of the United States, subject to review by the Court of Appeals for the District of Columbia Circuit. Section 2265(a) as amended makes clear that the only requirements that the Attorney General may impose for a State to receive certification are those expressly stated in chapter 154. See 28 U.S.C. 2265(a)(3)

( ''[t]here are no requirements for certification or for application of this chapter other than those expressly stated in this chapter''). It also provides that the date on which a State established the mechanism that qualifies it for certification is the effective date of the certification. See 28 U.S.C. 2265(a)(2).

In addition to the changes affecting certification, the Act amends section 2261(d) to permit the same counsel that has represented a prisoner on direct appeal to represent the prisoner in postconviction proceedings without limitation, and it amends section 2266(b)(1)(A) to extend the time for a district court to rule on a chapter 154 petition from 180 days to 450 days.

Section 2265(b) directs the Attorney General to promulgate regulations to implement the certification procedure. The Department consulted with a number of groups in developing this proposed rule to carry out the statutory directive, including representatives of State officials and both prosecution and defense interests concerned with capital case litigation. The consultations covered a broad range of issues affecting the implementation of the certification procedure, including the State officials who should be responsible for requesting certification, the requirements for certification, and the procedure for requesting certification. The proposed rule would add a new subpart entitled ''Certification Process for State Capital Counsel Systems'' to 28 CFR part 26.

**Section by Section Analysis**

*Section 26.20*

Section 26.20 explains the rule's purpose to implement the certification procedure for chapter 154.

*Section 26.21*

Section 26.21 provides definitions for certain terms used in chapter 154 and the regulations. Under 28 U.S.C. 2265(a), a certification request must be made by ''an appropriate State official.'' Pursuant to paragraph (a) of this section of the proposed rule, in most cases, that official will be the State Attorney General. In those few States, however, where the State Attorney General does not have responsibilities relating to Federal habeas corpus litigation, the Chief Executive of the State will be considered the appropriate State official to make a submission on behalf of the State.

Paragraph (b) defines ''State postconviction proceedings'' as referring to State collateral proceedings, which normally occur following the completion of direct review. However, in relation to States with unitary review systems for capital cases involving concurrent direct and collateral review, the term also encompasses the collateral review aspect of the unitary review process. Formerly separate provisions for the application of chapter 154 in States with unitary review systems under the original version of 28 U.S.C. 2265 were eliminated by the recent amendments in favor of the current provisions, which are worded broadly enough to permit chapter 154 certification both for States with bifurcated direct and collateral review systems and for States with unitary review systems. Compare current 28 U.S.C. 2261(b) and 2265 with former 28 U.S.C. 2261(b) and 2265.

The definition of ''State postconviction proceedings'' in the proposed rule reflects the underlying objective of chapter 154 to provide expedited Federal habeas corpus review in capital cases arising in States that have gone beyond the constitutional requirement of appointing counsel for indigents at trial and on appeal by extending the appointment of counsel to indigent capital defendants in State collateral proceedings. The provisions of chapter 154, as well as the relevant legislative history, reflect the understanding of ''postconviction proceedings'' as not encompassing all proceedings that occur after conviction (*e.g.*, sentencing proceedings, direct review), but rather as referring to collateral proceedings. *See* 28 U.S.C. 2261(e) (stipulating that ineffectiveness or incompetence of counsel during postconviction proceedings in a capital case cannot be a ground for relief in a Federal habeas corpus proceeding); 28 U.S.C. 2263(a), (b)(2) (180-day time limit for Federal habeas filing under chapter 154 starts to run ''after final State court affirmance of the conviction and sentence on direct review or the expiration of the time for seeking such review'' subject to tolling ''from the date on which the first petition for post-conviction review or other collateral relief is filed until the final State court disposition of such petition''); 152 Cong. Rec. S1620, S1624–25 (Mar. 2, 2006) (remarks of Sen. Kyl) (explaining that chapter 154 provides incentives for States to provide counsel in State postconviction proceedings, equated to collateral proceedings); 151 Cong. Rec. E2639–40 (daily ed., Dec. 14, 2005) (extension of remarks of Rep. Flake) (same understanding); see also, e.g., *Murray* v. *Giarratano,* 492 U.S. 1 (1989) (equating postconviction and collateral proceedings).

*Section 26.22*

Section 26.22 sets out the requirements for certification that a State must meet to qualify for the application of chapter 154. These are the requirements expressly set forth in 28 U.S.C. 2261(c)-(d) and 2265(a)(1). With respect to each of the requirements, examples are provided in the text of mechanisms that would be deemed sufficient or, in some cases, insufficient to comply with the chapter. The examples given of qualifying mechanisms are illustrative and therefore do not preclude States with other mechanisms for providing counsel in postconviction proceedings from meeting the requirements for certification.

*Section 26.23*

Section 26.23 sets out the mechanics of the certification process for States seeking to opt in to chapter 154.

**Regulatory Certifications**

*Executive Order 12866—Regulatory Planning and Review*

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been reviewed by the Office of Management and Budget.

*Executive Order 13132—Federalism*

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. It provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the U.S. Code. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Executive Order 12988—Civil Justice Reform*

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

*Regulatory Flexibility Act*

The Attorney General in accordance with the Regulatory Flexibility Act (5

U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This rule provides only a framework for those States that wish to qualify for the benefits of the expedited habeas procedures of chapter 154 of title 28 of the United States Code.

*Unfunded Mandates Reform Act of 1955*

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**List of Subjects in 28 CFR Part 26**

Law enforcement officers, Prisoners.

Accordingly, for the reasons set forth in the preamble, part 26 of chapter I of title 28 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 26—DEATH SENTENCES PROCEDURES

1. The heading for part 26 is revised as set forth above.

2. The authority citation for part 26 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001(b), 4002; 28 U.S.C. 509, 510, 2261, 2265.

3. Sections 26.1 through 26.5 are designated as Subpart A and a new subpart heading is added to read as follows:

## Subpart A—Implementation of Death Sentences in Federal Cases

4. Part 26 is amended by adding at the end thereof the following new Subpart B to read as follows:

## Subpart B—Certification Process for State Capital Counsel Systems

Sec.



### § 26.20 Purpose.

Sections 2261(b)(1) and 2265(a) of title 28 of the United States Code require the Attorney General to certify whether a State has a mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases that satisfies the requirements of chapter 154 of title 28. If certification is granted, sections 2262, 2263, 2264, and 2266 of chapter 154 of the U.S. Code apply in relation to Federal habeas corpus review of capital cases from the State. Subsection (b) of 28 U.S.C. 2265 directs the Attorney General to promulgate regulations to implement the certification procedure under subsection (a) of that section.

### § 26.21 Definitions.

For purposes of this part, the term—

*Appropriate State official* means the State Attorney General, except that, in a State in which the State Attorney General does not have responsibility for Federal habeas corpus litigation, it means the Chief Executive thereof.

*State postconviction proceedings* means collateral proceedings following direct State review or expiration of the time for seeking direct State review, except that, in a State with a unitary review system under which direct review and collateral review take place concurrently, the term includes the collateral review aspect of the unitary review process.

### § 26.22 Requirements.

A State meets the requirements for certification under 28 U.S.C. 2261 and 2265 if the Attorney General determines each of the following to be satisfied:

(a) The State has established a mechanism for the appointment of counsel for indigent prisoners under sentence of death in State postconviction proceedings. As provided in 28 U.S.C. 2261(c) and (d), the mechanism must offer to all such prisoners postconviction counsel, who may not be counsel who previously represented the prisoner at trial unless the prisoner and counsel expressly request continued representation, and the mechanism must provide for the entry of an order by a court of record—

(1) Appointing one or more attorneys as counsel to represent the prisoner upon a finding that the prisoner is indigent and accepted the offer or is unable competently to decide whether to accept or reject the offer;

(2) Finding, after a hearing if necessary, that the prisoner rejected the offer of counsel and made the decision with an understanding of its legal consequences; or

(3) Denying the appointment of counsel, upon a finding that the prisoner is not indigent.

*Example 1.* A State provides that attorneys in a public defender's office are to be appointed to represent indigent capital defendants in State postconviction proceedings in capital cases. The counsel appointment mechanism otherwise satisfies the requirements of 28 U.S.C. 2261(c) and (d). Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

*Example 2.* A State provides that in any capital case in which a defendant is found to be indigent, the court shall appoint counsel for State postconviction proceedings from a list of attorneys available to represent defendants in a manner consistent with 28 U.S.C. 2261(c) and (d). Such a mechanism would satisfy the chapter 154 requirement relating to appointment of counsel.

*Example 3.* State law provides that local jurisdictions are to determine whether counsel is appointed for indigents in State postconviction proceedings in capital cases and not all jurisdictions provide for the appointment of such counsel. This mechanism would not satisfy the chapter 154 requirement relating to appointment of counsel.

(b) The State has established a mechanism for compensation of appointed counsel in State postconviction proceedings.

*Example 1.* A State sets hourly rates and allowances for compensation of capital counsel, with judicial discretion to authorize additional compensation if necessary in particular cases. For example, State law may provide that capital counsel in State postconviction proceedings will be paid an hourly rate not to exceed $100 for up to 200 hours of work, and that these caps can be judicially waived if compensation would otherwise be unreasonable. Such a system would meet this requirement, as the State has established a mechanism to compensate counsel in State postconviction proceedings.

*Example 2.* A State provides that attorneys in a public defender's office are to be appointed to serve as counsel for indigent defendants in capital postconviction proceedings. The attorney's compensation is his or her regular salary provided by the public defender's office. Such a system would meet the requirement of establishing a mechanism to compensate counsel in State postconviction proceedings.

*Example 3.* A State appoints attorneys who serve on a volunteer basis as counsel for indigent defendants in all capital postconviction proceedings. There is no provision for compensation of appointed counsel by the State. Such a system would not meet the requirement regarding compensation of counsel.

(c) The State has established a mechanism for the payment of reasonable litigation expenses.

*Example 1.* A State may simply authorize the court to approve payment of reasonable litigation expenses. For example, State law may provide that the court shall order reimbursement of counsel for expenses if the expenses are reasonably necessary and reasonably incurred. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses.

*Example 2.* A State authorizes reimbursement of counsel for litigation expenses up to a set cap, but with allowance for judicial authorization to reimburse expenses above that level if necessary. This

system would parallel the approach in postconviction proceedings in Federal capital cases and in Federal habeas corpus review of State capital cases under 18 U.S.C. 3599(a)(2), (f), (g)(2), which sets a presumptive cap of $7,500 but provides a procedure for judicial authorization of greater amounts. Such a system would meet the requirement of establishing a mechanism for payment of reasonable litigation expenses as required for certification under chapter 154.

*Example 3.* State law authorizes reimbursement of counsel for litigation expenses in capital postconviction proceedings up to $1000. There is no authorization for payment of litigation expenses above that set cap, even if the expenses are determined by the court to be reasonably necessary and reasonably incurred. This mechanism would not satisfy the chapter 154 requirement regarding payment of reasonable litigation expenses.

(d) The State provides competency standards for the appointment of counsel representing indigent prisoners in capital cases in State postconviction proceedings.

*Example 1.* A State requires that postconviction counsel must have been a member of the State bar for at least five years and have at least three years of felony litigation experience. This standard is similar to that set by Federal law for appointed counsel for indigent defendants in postconviction proceedings in Federal capital cases, and in Federal habeas corpus review of State capital cases, under 18 U.S.C. 3599(a)(2), (c). Because this State has adopted standards of competency, it meets this requirement.

*Example 2.* A State appoints counsel for indigent capital defendants in postconviction proceedings from a public defender's office. The appointed defender must be an attorney admitted to practice law in the State and must possess demonstrated experience in the litigation of capital cases. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

*Example 3.* A State law requires some combination of training and litigation experience. For example, State law might provide that in order to represent an indigent defendant in State postconviction proceedings in a capital case an attorney must—(1) Have attended at least twelve hours of training or educational programs on postconviction criminal litigation and the defense of capital cases; (2) have substantial felony trial experience; and (3) have participated as counsel or co-counsel in at least five appeals or postconviction review proceedings relating to violent felony convictions. This State would meet the requirement of having established standards of competency for postconviction capital counsel.

*Example 4.* State law allows any attorney licensed by the State bar to practice law to represent indigent capital defendants in postconviction proceedings. No effort is made to set further standards or guidelines for such representation. Such a mechanism would not meet the requirement of having established standards of competency for postconviction capital counsel.

**§ 26.23 Certification process.**

(a) An appropriate State official may request that the Attorney General determine whether the State meets the requirements for certification under § 26.22.

(b) The request shall include:

(1) An attestation by the submitting State official that he or she is the ''appropriate State official'' as defined in § 26.21; and

(2) An affirmation by the State that it has provided notice of its request for certification to the chief justice of the State's highest court.

(c) Upon receipt of a State's request for certification, the Attorney General will publish a notice in the **Federal Register**—

(1) Indicating that the State has requested certification;

(2) Listing any statutes, regulations, rules, policies, and other authorities identified by the State in support of the request; and

(3) Soliciting public comment on the request.

(d) The State's request will be reviewed by the Attorney General, who may, at any time, request supplementary information from the State or advise the State of any deficiencies that would need to be remedied in order to obtain certification. The review will include consideration of timely public comments received in response to the **Federal Register** notice under paragraph (c) of this section, and the certification will be published in the **Federal Register**, if certification is granted.

(e) Upon certification by the Attorney General that a State meets the requirements of § 26.22, such certification is final and will not be reopened. Subsequent changes in a State's mechanism for providing legal representation to indigent prisoners in State postconviction proceedings in capital cases do not affect the validity of a prior certification or the applicability of chapter 154 in any case in which a mechanism certified by the Attorney General existed during State postconviction proceedings in the case. If a State with a certified mechanism amends governing State law to change its mechanism in a manner that may affect satisfaction of the requirements of § 26.22, the certification of the State's mechanism prior to the change does not apply to the changed mechanism, but the State may request a new certification by the Attorney General that the changed mechanism satisfies the requirements of § 26.22.

Dated: May 29, 2007.

**Alberto R. Gonzales,**

*Attorney General.*

[FR Doc. E7–10892 Filed 6–5–07; 8:45 am]

**BILLING CODE 4410–18–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2006– 0175; FRL–8129–2]**

## Pesticides; Food Packaging treated with a Pesticide; Reopening of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed Rulemaking; reopening of the public comment period.

**SUMMARY:** EPA is reopening the public comment period for a proposed rule concerning pesticide-treated food packaging published in the **Federal Register** of April 6, 2007. Written comments were required to be submitted by April 21, 2007. EPA is reopening the comment period because the Agency received, considered and accepted a petition to extend the public comment period. This document reopens the comment period for an additional 30 days.

**DATES:** Comments must be received on or before July 6, 2007.

**ADDRESSES:** Follow the detailed instructions provided under **ADDRESSES** in the proposed rule published in the **Federal Register** of April 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mari L. Duggard, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0028; fax number: (703) 308–7026; e-mail address:*duggard.mari@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

The Agency identified in the proposed rule those who may be potentially affected by that action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How and to Whom Do I Submit Comments?*

To submit comments, or access the public docket, follow the detailed

instructions provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** of the April 6, 2007 proposed rule.

**II. What Action is EPA Taking?**

This document reopens the comment period established in a proposed rule published in the **Federal Register** of April 6, 2007 (72 FR 17068) (FRL–8119–8). In that document, pursuant to FFDCA section 201(q)(3), EPA proposed to amend the current exception at 40 CFR §180.4 such that inert ingredients of food packaging (paper and paperboard, coatings, adhesives and polymers) are excepted from the definition of ''pesticide chemical'' or ''pesticide chemical residue'', when the food packaging has been treated with a pesticide. EPA is reopening the comment period for 30 days. The new comment period ends on July 6, 2007.

**III. What is the Agency's Authority for Taking this Action?**

Section 201(q)(3) of FFDCA, as amended by the Food Quality Protection Act (FQPA), allows the Administrator, under specified conditions, to except by regulation certain substances from the definition of ''pesticide chemical'' or ''pesticide chemical residue'' if-

(A) Its occurrence as a residue on or in a raw agricultural commodity or processed food is attributable primarily to natural causes or human activities not involving the use of any substance for a pesticidal purpose in the production, storage, processing, or transportation of any raw agricultural commodity or processed food; and

(B) The Administrator, after consultation with the Secretary, determines that the substance more appropriately should be regulated under one or more provisions of this Act other than sections 402(a)(2)(B) and 408.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record-keeping requirements.

Dated: May 21, 2007.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs*

[FR Doc. E7–10693 Filed 6–5–07; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2007–0097; FRL–8122–7]**

## Captan, 2,4-D, Dodine, DCPA, Endothall, Fomesafen, Propyzamide, Ethofumesate, Permethrin, Dimethipin, and Fenarimol; Proposed Tolerance Actions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to revoke certain tolerances for captan, 2,4-D, dodine, endothall, propyzamide, permethrin, ethofumesate and dimethipin. Also, EPA is proposing to modify certain tolerances for captan, 2,4-D, dodine, DCPA, endothall, propyzamide, permethrin, ethofumesate, and fomesafen. In addition, EPA is proposing to establish new tolerances for captan, 2,4-D, dodine, propyzamide, permethrin, and ethofumesate. The regulatory actions proposed in this document are in follow-up to the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q).

**DATES:** Comments must be received on or before August 6, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0097, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2007–0097. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address: *smith.jane-scott@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

### *C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?*

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

## II. Background

### *A. What Action is the Agency Taking?*

EPA is proposing to revoke, remove, modify, and establish specific tolerances for residues of the fungicides captan, dodine, and fenarimol; the herbicides 2,4-D, DCPA, endothall, propyzamide, ethofumesate, dimethipin and fomesafen; and the insecticide permethrin in or on the commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Food Quality Protection Act (FQPA). The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each Reregistration Eligibility Decision (RED) and Report of the Food Quality Protection Act (FQPA) Tolerance Reassessment Progress and Risk Management Decision (TRED) for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419; telephone 1 (800) 490–9198; fax 1 (513) 489-8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161; telephone 1 (800) 553–6847 or (703) 605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPA recommends the raising of a tolerance when data show that: (1) Lawful use (sometimes through a label change) may result in a higher residue level on the commodity; and, (2) the

tolerance remains safe, not withstanding increased residue level allowed under the tolerance. In REDs, Chapter IV on ''Risk Management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for the U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure. EPA also seeks to harmonize tolerances with international standards set by the Codex Alimentarius Commission, as described in Unit III.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and electronic copies are available through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov/*. You may search for docket number EPA–HQ–OPP–007–0097 and also EPA–HQ–OPP–2005–0266 (dodine); EPA–HQ–OPP–2004–0370 (endothall); EPA–HQ–OPP–2004–0380 (dimethipin); EPA–HQ–OPP–2002–0159 (propyzamide); EPA–HQ–OPP–2004–0346 (ethofumesate); EPA–HQ–OPP–2004–0385 (permethrin); EPA–HQ–OPP–2004–0167 (2,4-D); EPA–HQ–OPP–2004–0296 (Captan) and EPA–HQ–OPP–2002–0250 and EPA–HQ–OPP–2005–0459 (fenarimol), then click on that docket number to view its contents.

EPA has determined that the aggregate exposures and risks are not of concern for the above mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be modified, are safe in accordance with FFDCA section 408(b)(2)(A), and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). These findings are discussed in detail in each RED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. The registrations for these pesticide chemicals were canceled because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily requested cancellation of one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Captan.* Tolerances are currently established for both plant and animal commodities in 40 CFR 180.103(a) for residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) for preharvest and postharvest uses or combinations of such uses in or on plant and animal commodities. This use-pattern timing related language, preharvest and postharvest, is impractical and should be removed because enforcement officials would rarely be able to determine the timing of the application. Also, the Agency has determined that the residues of concern are captan *per se* in plants and that the metabolite 1,2,3,6-tetrahydrophthalimide (THPI) of captan is of toxicological concern and should be regulated in/on animal commodities along with captan. Therefore, EPA proposes transferring the tolerance expressions in 40 CFR 180.103(a) to (a)(1) for residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on plant commodities retaining those plant-related tolerances and to transfer livestock tolerances into (a)(2) for the combined residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) and its metabolite 1,2,3,6-tetrahydrophthalimide (THPI), measured as THPI, in or on animal commodities. Currently, tolerances in 40 CFR 180.103(b) are for residues of captan on an interim basis for almonds, almond hulls, beans dry, beans succulent, and potatoes. The Agency has determined that these tolerances are no longer interim and should be moved to 40 CFR 180.103(a)(1). Also, to conform to current Agency practice, 40 CFR 180.103(b) should now be designated for section 18 emergency exemptions - reserved; add paragraph (c) for regional registrations - reserved; and add paragraph (d) for indirect or inadvertent residues - reserved. Therefore, EPA proposes that the interim tolerances listed in 40 CFR 180.103(b) be transferred to 40 CFR 180.103(a)(1); paragraph (b) be revised to (b) section 18 emergency exemptions - reserved; add paragraph (c) regional registrations - reserved; and add paragraph (d) indirect or inadvertent residues - reserved.

Based on available field trial data that indicate residues of captan as high as 0.18 parts per million (ppm) in/on almonds, 54.91 ppm in/on almond hulls, 7 ppm in/on apricot, 18.3 ppm in/on blueberries, 36 ppm in/on cherries, 22.4 ppm in/on grapes, 10 ppm in/on nectarines, 14 ppm in/on peach, 8 ppm in/on plum, 2 ppm in/on prune, 12 ppm in/on plum/prune juice, and 13 ppm in/on strawberries, the Agency determined that the tolerance should be decreased to 0.25 ppm in/on almonds, 75 ppm in/on almond hulls, 10 ppm in/on apricots, 20 ppm in/on blueberries, 50 ppm in/on cherries, 25 ppm in/on grapes, 25 ppm in/on nectarines, 15 ppm in/on peaches, 10 ppm in/on plums and 20 ppm in/on strawberry. The tolerance for strawberries was also decreased to harmonize with the Codex alimentarius. Therefore, EPA proposes decreasing tolerances in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in or on almond from 2 to 0.25 ppm; almond, hulls from 100 to 75 ppm; apricot from 50 to 10 ppm; blueberry from 25 to 20 ppm; cherry at 100 to cherry, sweet at 50 ppm and cherry, tart at 50 ppm; grape from 50 to 25 ppm; nectarine from 50 to 25 ppm; peach from 50 to 15 ppm; plum, prune, fresh from 100 to 10 ppm; and strawberry from 25 to 20 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on dry and succulent beans, peas and soybeans; therefore, the Agency determined that the tolerances should be 0.05 ppm on vegetable, legume, group 6 and vegetable, foliage of legume, group 7, replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on beans, dry, seed at 25 ppm; bean, succulent at 25 ppm; pea, dry, seed at 2 ppm; pea, succulent at 2 ppm; soybean, dry at 2 ppm; soybean, succulent at 2 ppm to

vegetable, legume, group 6 at 0.05 ppm and vegetable, foliage of legume, group 7 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on garden beets, carrots, rutabagas, potatoes, and turnips; therefore, the Agency determined that the tolerances should be 0.05 ppm on vegetable, root and tuber, group 1 and vegetable, leaves of root and tuber, group 2, replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerances in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on beet, garden, roots at 2 ppm; beet, garden, tops at 100 ppm; carrot, roots at 2 ppm; potato at 25 ppm; rutabagas (roots) at 2 ppm; turnip, greens at 2.0 ppm; turnip, roots at 2.0 ppm to vegetable, root and tuber, group 1 at 0.05 ppm and vegetable, leaves of root and tuber, group 2 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, and mustard greens; therefore, the Agency determined that the tolerance should be 0.05 ppm on vegetable, brassica leafy, group 5 replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on broccoli, Brussels sprouts, cabbage, cauliflower, collards, kale, mustard greens each at 2 ppm to vegetable, brassica leafy, group 5 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on cantaloupe, cucumber, honeydew melon, muskmelon, pumpkins, summer squash, winter squash, and watermelons; therefore, the Agency determined that the tolerance should be 0.05 ppm on vegetable, cucurbit group 9 replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on cantaloupe; cucumber; melon, honeydew; muskmelon; pumpkin; squash, summer; squash, winter; and watermelon each at 25 ppm to vegetable, cucurbit, group 9 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on celery, lettuce, and spinach; therefore, the Agency determined that the tolerance should be 0.05 ppm on vegetable, leafy, except brassica, group 4 replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on celery at 50 ppm, lettuce at 100 ppm, and spinach at 100 ppm to vegetable, leafy, except brassica, group 4 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on eggplant, peppers, and tomato; therefore, the Agency determined that the tolerance should be 0.05 ppm on vegetable, fruiting, group 8 replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on eggplant; pepper; and tomato each at 25 ppm to vegetable, fruiting, group 8 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on bulb onion and green onion; therefore, the Agency determined that the tolerance should be 0.05 ppm on vegetable, bulb, group 3 replacing the individual tolerances. Therefore, EPA proposes decreasing and modifying the individual tolerances to a crop group tolerance in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on onion, bulb at 25 ppm and onion, green at 50 ppm to vegetable, bulb, group 3 at 0.05 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on corn; therefore, the Agency determined that the tolerance should be 0.05 ppm on grain, cereal, group 15 and grain, cereal, forage, fodder and straw, group 16 replacing the tolerance corn, sweet, kernel plus cob with husks removed. Therefore, EPA proposes decreasing and modifying a tolerance to crop group tolerances in newly revised 40 CFR 180.103(a)(1) for captan residues of concern in plants in/on corn, sweet, kernel plus cob with husks removed at 2 ppm to grain, cereal, group 15 and grain, cereal, forage, fodder and straw, group 16 at 0.05 ppm.

The Agency has determined that tolerances for blackberry, dewberry and raspberry each at 25 ppm should be replaced by the crop group tolerance caneberry, subgroup 13A at 25 ppm. Therefore, EPA proposes modifying the individual tolerances to a crop group tolerance in newly proposed 40 CFR 180.103(a) for captan residues of concern in plants in/on blackberry, dewberry, and raspberry each at 25 ppm to caneberry, subgroup 13A at 25 ppm.

Based on available data reflecting seed treatment use, residues of captan were <0.05 ppm (the level of detection) in or on cottonseed; dill seed; flax seed; grass forage; grass, hay; non-grass animal feeds group 18; okra; peanuts; peanut hay; rapeseed; rapeseed forage; safflower seed; sesame seed; and sunflower seed; therefore, the Agency determined that the tolerances should each be 0.05 ppm. Tolerances for flax straw and sunflower forage are no longer necessary because these commodities are not considered significant feed items in accordance with ''Table 1.—Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops'' which is found in Residue Chemistry Test Guidelines OPPTS 860.1000 dated August 1996, available at*http://www.epa.gov/opptsfrs/publications/OPPTS Harmonized/860 Residue Chemistry Test Guidelines/Series*. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.103(a)(1) for captan residues of concern in or on dill, seed at 0.05 ppm; flax, seed at 0.05 ppm; grass, forage at 0.05 ppm; grass, hay at 0.05 ppm; animal feed, nongrass, group 18 at 0.05 ppm; okra at 0.05 ppm; peanut at 0.05 ppm; peanut, hay at 0.05 ppm; rapeseed, seed at 0.05 ppm; rapeseed, forage at 0.05 ppm; safflower, seed at 0.05 ppm; sesame, seed at 0.05 ppm; and sunflower, seed at 0.05 ppm and decrease cotton, undelinted seed from 2 to 0.05 ppm.

Based on the livestock dietary burden from wet apple pomace and animal feed commodities from seed treatments, the maximum theoretical dietary burden of captan residues of concern for dairy cattle is 17.27 ppm and beef cattle is 27.72 ppm. Using the results of the 30 ppm feeding level from the animal feeding study, the expected residue levels are 0.11 ppm in fat; 0.25 ppm in kidney (meat byproducts); 0.18 ppm in muscle; and 0.06 ppm in milk. Based on these data, the Agency has determined that the tolerances in cattle, goat, horse, hog and sheep should be: 0.20 ppm in meat; 0.30 ppm in meat byproducts; 0.15 ppm in fat; and 0.10 ppm in milk (where sheep meat, fat and meat byproducts tolerances reflect the text in the tolerance reassessment of the RED versus the table C which is not accurate). Therefore, EPA proposes increasing the tolerances in newly revised 40 CFR 180.103(a)(2) for the combined residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) and its metabolite 1,2,3,6-

tetrahydrophthalimide (THPI) in or on cattle, fat from 0.05 to 0.15 ppm; cattle, meat from 0.05 to 0.20 ppm; cattle, meat byproducts from 0.05 to 0.30 ppm; hog, fat from 0.05 to 0.15 ppm; hog, meat from 0.05 to 0.20 ppm; hog, meat byproducts from 0.05 to 0.30 ppm and proposes establishing tolerances in newly revised 40 CFR 180.103(a)(2) in/on goat, fat at 0.15 ppm; goat, meat at 0.20 ppm; goat, meat byproducts at 0.30 ppm; horse, fat at 0.15 ppm; horse, meat at 0.20 ppm; horse, meat byproducts at 0.30 ppm; milk at 0.10 ppm; sheep, fat at 0.15 ppm; sheep, meat at 0.20 ppm; and sheep, meat byproducts at 0.30 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

The last registered use of captan on mangoes was canceled in 1998; therefore, the tolerance is no longer needed. Therefore, EPA is proposing to revoke the existing tolerance for mango at 50 ppm in newly revised 40 CFR 180.103(a)(1).

The proposed tolerance actions herein for captan, to implement the recommendations of the captan RED, reflect use patterns in the U.S. which support a different tolerance than the Codex level on almonds, cucumbers, nectarines, raspberries, and tomatoes, because of differences in good agricultural practices. However, compatibility exists for apples and pears will exist between the proposed reassessed U.S. tolerances and Codex MRLs for captan residues in or on blueberries, peaches, potatoes, and strawberries.

2. *2,4-D*. Currently, tolerances for residues of 2,4-D in or on plant raw agricultural commodities fish and potable water are currently expressed in terms of 2,4-D (2,4-dichlorophenoxyacetic acid) in 40 CFR180.142(a)(1-2, 4-7 and 9-13). The residues are regulated depending on the use pattern, the form of the 2,4-D formulation applied (e.g., acid, salts), timing of treatment (preharvest or postharvest) and some commodities are covered by two or more tolerances (e.g., citrus). This use-pattern related language is impractical and should be removed for three reasons:

i. 2,4-D in the acid form as well as the sodium salt, four amine salts, and three esters upon contact with water and/or hydrolytic enzymes are converted to a single common moiety, 2,4-D (anion or acid depending on the pH) which is the pesticidally active component serving as the basis for the tolerance regulation. Consequently, the available tolerance enforcement methodology cannot distinguish between which form of the pesticidally active component was applied.

ii. If 2,4-D residues were detected in a commodity, enforcement officials would rarely be able to determine who applied the pesticide, when, or for what purpose.

iii. If the 2,4-D concentration were to fall between two tolerance levels for the same commodity, the Agency would not know whether the sample was violative.

Therefore, EPA is proposing to subsume the lower tolerances in the higher existing tolerances, delete use-pattern related language (e.g., timing and formulation), and revise the tolerances in 40 CFR 180.142(a)(1-2, 4-7 and 9-13) into 40 CFR 180.142(a) for residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid and delete the paragraphs designations (1-2, 4-7, and 9-13).

The available field trial data indicate residues of 2,4-D are as high as 1.39 ppm in or on wheat grain. The wheat grain data are translated to support tolerances for barley, millet, oats and rye grain. Based on these data, the Agency determined that the tolerance should be increased to 2.0 ppm on wheat, barley, millet, oats and rye grain. Based on available field trial data that indicate residues of 2,4-D as high as 24.9 ppm and 40.9 ppm in or on wheat forage and wheat straw, respectively, which is also translated to millet, oats and rye forage and millet straw, the Agency determined that the tolerances should be increased to 25 ppm in/on wheat, millet, oats, and rye forage and 50 ppm in/on millet straw. Based on available field trial data that indicate residues of 2,4-D as high as 49.8 ppm in/on corn stover; 0.053 ppm in/on hops; 0.31 ppm in/on potatoes; <0.01 ppm in/on strawberry; and 0.485 ppm in/on rice, the Agency determined that the tolerances should be increased to 50 ppm in/on corn, stover; 0.2 ppm in/on hop; 0.4 in/on potato; 0.01 ppm in/on strawberry; and 0.5 ppm in/on rice, grain. EPA is also revising commodity terminology to conform to current Agency practice. Therefore, EPA is proposing to increase and revise tolerances in newly revised 40 CFR 180.142(a) for the combined 2,4-D residues of concern in or on barley, grain from 0.5 to 2.0 ppm; millet, grain from 0.5 to 2.0 ppm; oat, grain from 0.5 to 2.0 ppm; rye, grain from 0.5 to 2.0 ppm; wheat, grain from 0.5 to 2.0 ppm; millet, straw from 20 to 25 ppm; millet, forage from 20 to 25 ppm; oat, forage from 20 to 25 ppm; rye, forage 20 to 25 ppm; wheat, forage from 20 to 25 ppm; rice grain from 0.1 to 0.5 ppm; corn, stover from 20 to 50 ppm; hop from 0.05 to 0.2 ppm; potato from 0.2 to 0.4 ppm; and strawberry from 0.05 to 0.1 ppm and revise corn, stover to corn, field, stover; corn, pop, stover; and corn, sweet, stover; and revise hop to hop, dried cones. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data on field corn, pop corn, and sweet corn that indicate residues of 2,4-D as high as 5.2 ppm in/on corn forage, <0.05 ppm in/on corn fresh, sweet, kernel plus cob with husks removed, and 0.038 ppm in/on corn grain, the Agency determined that the tolerances should be decreased to 6.0 ppm, 0.05 ppm, and 0.05 ppm, respectively. Based on available field trial data that indicate residues of 2,4-D as high as 0.07 ppm in/on fish, 0.079 ppm in/on grapefruits, 0.24 ppm in/on oranges, and 2.5 ppm in/on lemons, the Agency determined that the tolerances should be decreased to 0.10 ppm in/on fish and to 3.0 ppm in/on fruit, citrus, group 10. Based on available field trial data that indicate residues of 2,4-D as high as <0.01 ppm in/on apples and pears, the Agency determined that the tolerance should be decreased to 0.1 ppm in/on fruit, pome, group 11 replacing the individual tolerances for apple, pear, and quince. Based on available field trial data that indicate residues of 2,4-D as high as <0.05 ppm in/on cherries, <0.01 ppm in/on peaches, and <0.01 ppm in/on plums, the Agency determined that the tolerance should be decreased to 0.1 ppm in/on fruit, stone group 12 replacing the individual tolerance for apricots. Based on available field trial data that indicate residues of 2,4-D as high as <0.05 ppm in/on pistachio; <0.1 in/on grapes; 358 ppm in/on grass, pasture and rangeland; 8.83 ppm in/on rice, straw; 0.162 ppm in/on sorghum, forage; 0.012 ppm in/on sorghum, grain; 0.17 ppm in/on sorghum, grain, stover; 0.015 ppm in/on sugarcane; and 0.105 ppm in/on sugarcane, molasses, the Agency determined that the tolerances should be decreased to 0.05 ppm in/on pistachio; 0.1 ppm in/on grape; 300 ppm in/on grass, hay; 360 ppm in/on grass, pasture and grass, rangeland; 10 ppm in/on rice, straw; 0.2 ppm in/on sorghum, forage; 0.2 ppm in/on sorghum, grain; 0.2 ppm in/on sorghum, grain, stover; 0.05 ppm in/on sugarcane; and 0.2 ppm in/on sugarcane, molasses. EPA is also revising commodity terminology to conform to current

Agency practice. Therefore, EPA is proposing to decrease and revise tolerances in newly revised 40 CFR 180.142(a) for the combined 2,4-D residues of concern in or on corn, forage from 20 to corn, field, forage; and corn, sweet, forage at 6.0; corn, fresh, sweet, kernel plus cob with husks removed at 0.5 to corn, sweet, kernel plus cob with husks removed at 0.05 ppm; corn, grain at 0.5 to corn, field, grain at 0.05 ppm and corn, pop, grain at 0.05 ppm; fish, 1.0 to 0.10 ppm; fruit, citrus at 5 ppm to fruit, citrus, group 10 at 3.0 ppm; fruit, pome at 0.1 and apple, pear, and quince at 5 ppm to fruit, pome, group 11 at 0.1 ppm; apricot at 5 ppm and fruit, stone at 0.2 ppm to fruit, stone, group 12 at 0.1 ppm; pistachio at 0.05 ppm; grape from 0.5 to 0.1 ppm; grass, pasture and grass, rangeland from 1,000 ppm to grass, forage at 360 ppm; rice, straw from 20 to 10 ppm; sorghum, forage from 20 to sorghum, grain, forage at 0.2 ppm; sorghum, grain from 0.5 to sorghum, grain, grain at 0.2 ppm; sorghum, grain, stover from 20 to 0.2 ppm; sugarcane, cane from 2 ppm to 0.05 ppm; and sugarcane, molasses from 5 to 0.2 ppm.

Based on available field trial data that indicate residues of 2,4-D as high as 0.106 ppm in cranberry, <0.05 ppm in low bush (berries), and 0.011 ppm in high bush (berries), the Agency has determined the tolerance should be revised to 0.2 ppm in/on berry, group 14 in place of the individual tolerances. These tolerances are also being maintained to cover inadvertent or indirect residues that may occur. Therefore, EPA proposes revising the tolerances in newly revised 40 CFR 180.142(a) for the combined 2,4-D residues of concern in or on blueberry at 0.1 ppm, cranberry at 0.5 ppm, raspberry at 0.1 ppm and small fruit at 0.1(N) to berry, group 14 at 0.2 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that indicate residues of 2,4-D as high as 0.098 ppm in/on almond hulls; 1.48 ppm in on corn aspirated grain fractions (AGF) and 36.3 ppm in/on wheat AGF; 40.9 ppm in/on wheat straw, 3.88 ppm in/on wheat bran, and 1.40 ppm in/on rice, hulls; <0.01 ppm in/on soybean forage; 1.13 ppm in/on soybean hay; and <0.01 ppm in/on soybean seeds, the Agency determined that tolerances should be established in/on almond, hulls at 0.1 ppm; grain, aspirated fractions 40 ppm; wheat, straw at 50 ppm (and translating the wheat straw data to barley, oat, and rye); barley, straw at 50 ppm; oat, straw at 50 ppm; rye, straw at 50 ppm; wheat, bran at 4.0 ppm (and translating the wheat bran data to barley and rye) barley, bran at 4.0 ppm; rye, bran at 4.0 ppm; rice, hulls at 2.0 ppm; soybean, forage at 0.02 ppm; soybean, hay at 2.0 ppm; and soybean, seed at 0.02 ppm. Therefore, EPA is proposing to establish the tolerances in newly revised 40 CFR 180.142(a) for the combined 2,4-D residues of concern in or on almond, hulls at 0.1 ppm; barley, bran at 4.0 ppm; barley, straw at 50 ppm; grain, aspirated fractions at 40 ppm; oat, straw at 50 ppm; rice, hulls at 2.0 ppm; rye, bran at 4.0 ppm; rye, straw at 50 ppm; soybean, hay at 2.0 ppm; soybean, forage at 0.02 ppm; soybean, seed at 0.02 ppm; wheat, bran at 4.0 ppm; and wheat, straw at 50 ppm.

In addition, tolerances for residues in food products of animal origin are currently expressed in terms of 2,4-D and/or its metabolite 2,4-dichlorophenol (2,4-DCP) in 40 CFR 180.142(a)(8). The Agency has determined that the metabolite, 2,4-DCP, is not of concern for either the tolerance expression or for risk assessment at the minute levels expected in livestock tissues and considering the likely lower toxicity of 2,4-DCP compared to 2,4-D. Consequently, the regulated residues of 2,4-D are now the same for plants, shellfish, fish, and foods of animal origin. Therefore, EPA is proposing to change the residues of concern, transfer the foods of animal origin tolerances in 40 CFR 180.142(a)(8) into 40 CFR 180.142(a) for the combined 2,4-D residues of concern and delete paragraph (a)(8).

Ruminant feeding data at an exaggerated level (1.7x) show that 2,4-D residues are as high as 0.51 ppm in fat, 0.24 ppm in meat, 0.2 ppm in liver, 6.48 ppm in kidney, and 0.07 ppm in milk. These studies also showed that 2,4-D is rapidly excreted from animals. Based on the rapid excretion and residue levels on the last day of dosing in feeding studies, the Agency has determined that the 2,4-D tolerance in milk may be decreased to 0.05 ppm and to 0.3 ppm in the fat of cattle, goats, horses, and sheep. The tolerances should be increased to 4.0 ppm in the kidneys of cattle, goats, horses, and sheep and to 0.3 ppm in the meat and meat byproducts of cattle, goats, horses, and sheep. Therefore, EPA is proposing to increase tolerances in newly revised 40 CFR 180.142(a) for the combined 2,4-D residues of concern in or on cattle, kidney from 2 to 4.0 ppm; goat, kidney from 2 to 4.0 ppm; horse, kidney from 2 to 4.0 ppm; and sheep, kidney from 2 to 4.0 ppm; cattle, meat from 0.2 to 0.3 ppm; goats, meat from 0.2 to 0.3 ppm; horses, meat from 0.2 to 0.3 ppm; sheep, meat from 0.2 to 0.3 ppm; cattle, meat byproducts, except kidney from 0.2 to 0.3 ppm; goats, meat byproducts, except kidney from 0.2 to 0.3 ppm; horses, meat byproducts, except kidney from 0.2 to 0.3 ppm; and sheep, meat byproducts, except kidney from 0.2 to 0.3 ppm; cattle, fat from 0.2 to 0.3 ppm; goat, fat from 0.2 to 0.3 ppm; horse, fat from 0.2 to 0.3 ppm; sheep, fat from 0.2 to 0.3 ppm; and decrease milk from 0.1 to 0.05 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the results of a 2,4-D poultry metabolism study, there is no reasonable expectation of finite residues in poultry tissues and eggs (Category 3 of 40 CFR 180.6(a)(3)) when 2,4-D is applied according to registered use directions. Therefore, the Agency determined that tolerances for residues of 2,4-D in poultry commodities are not needed. In addition, as the lowest feeding level for cattle was 940x the maximum theoretical dietary burden for swine, the maximum expected residues in hog tissues would be 0.007 ppm (kidney). Accordingly, there is no reasonable expectation of finite residues in hog commodities (Category 3 of 40 CFR 180.6(a)(3)); therefore, the Agency has determined tolerances associated with hog tissues are no longer needed and should be revoked. Therefore, EPA is proposing to revoke the tolerances in newly revised 40 CFR 180.142(a) for 2,4-D residues of concern in or on egg at 0.05 ppm; hog, fat; hog, meat; and hog, meat byproducts, except kidney at 0.2 ppm; hog, kidney at 2 ppm; and poultry at 0.05 ppm.

Tolerances listed in 40 CFR 180.142(a)(3) are currently established for negligible residues of 2,4-D in irrigated crops from application of its dimethylamine salt in the western United States (U.S.). Specifically, the tolerances on fruit, citrus; fruit, pome; fruit, stone; grain, crop; root crop vegetables; grass, forage; hop; small fruit (newly termed berry, group 14) and nut each at 0.1(N) ppm in 40 CFR 180.142(a)(3) have existing tolerances in newly revised 40 CFR 180.142(a) which are high enough to cover any inadvertent residues on these commodities. The tolerances associated with commodities that do not receive direct treatment of 2,4-D in 40 CFR 180.142(a)(3)—avocado; cotton, undelinted seed; cucurbits; grain, crop; leafy vegetables; legume forage; root crop vegetables; seed and pod

vegetables; and vegetable, fruiting each at 0.1(N) should be transferred to 40 CFR 180.142(d) as they cover inadvertent and indirect residues. Therefore, EPA is proposing that commodities and tolerances in 40 CFR 180.142(a)(3) that are duplicative of commodities and tolerances in newly revised 40 CFR 180.142(a) be removed from 40 CFR 180.142 (a)(3). EPA is also proposing that the remaining commodities and tolerance combinations in 40 CFR 180.142(a)(3) (avocado; cotton, undelinted seed; cucurbits; grain, crop; leafy vegetables; legume forage; root crop vegetables; seed and pod vegetables; and vegetable, fruiting each at 0.1(N)) be transferred in 40 CFR 180.142(d) for inadvertent or indirect residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid and delete 40 CFR 180.142(a)(3).

The available irrigated crop residue data for leafy vegetables and legume, forage had maximum residue levels of 0.33 ppm and 0.15 ppm, respectively; therefore, the Agency has determined the tolerances should be increased from 0.1(N) to 0.4 ppm and 0.2 ppm, respectively. The available residue data for inadvertent residue levels on the remaining crops (avocado, cotton, cucurbits, bulbs in the root crop vegetables, seed and pod vegetables and fruiting vegetables) do not exceed the level of quantitation of 0.05 ppm and two times the level of quantitation for direct uses on the root and tubers of the root crop vegetables; therefore, the Agency determined the tolerances should be decreased to 0.05 ppm. Based on the available irrigation data, the resulting direct and inadvertent residues are expected to be ≤0.1 ppm in/on the bulbs in the root crop vegetables; therefore, the Agency has determined the tolerance level and terminology should be at 0.5 ppm in/on vegetable, bulb, group 3, 0.1 ppm in/on vegetable, root and tuber, except potato, group 1 and vegetable, leaves of root and tuber, except potato, group 2. EPA is also proposing to revise commodity terminology and removing the ''(N)'' designation for negligible residues to conform to current Agency practice. Therefore, EPA is proposing to revise and modify tolerances in 40 CFR 180.142(d) for the combined 2,4-D residues of concern by decreasing and revising avocado from 0.1 (N) to 0.05 ppm; cotton, undelinted seed from 0.1(N) to 0.05 ppm; cucurbits at 0.1(N) to vegetable, cucurbit, group 9 at 0.05 ppm; root crop vegetables at 0.1 (N) to vegetable, bulb, group 3 at 0.05 ppm; vegetable, fruiting at 0.1(N) to vegetable, fruiting, group 8 at 0.05 ppm; vegetable, seed and pod at 0.1 (N) to vegetable, legume, group 6 at 0.05 ppm, okra at 0.05 ppm and dill, seed at 0.05 ppm; increasing and revising legume forage at 0.1(N) to vegetable, foliage of legume, group 7 at 0.2 ppm and animal feed, nongrass, group 18 at 0.2 ppm; vegetable, leafy at 0.1(N) to vegetable, brassica leafy, group 5 at 0.4 ppm and vegetable, leafy, except brassica, group 4 at 0.4 ppm; and in 40 CFR 180.142(a) further revise the tolerance vegetable, root at 0.1(N) to vegetable, root and tuber, except potato, group 1; and vegetable, leaves of root and tuber, except potato, group 2 at 0.1 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that indicate residues of 2,4-D as high as <0.05 ppm in/on wild rice in Minnesota, the Agency has determined that a regional tolerance should be established at 0.05 ppm in/on rice, wild, grain. Therefore, EPA proposes removing the expired (12/31/05) section 18 emergency exemption in/on wild rice at 0.1 ppm in 40 CFR 180.142(b), reserving the paragraph, and establishing a regional tolerance in 40 CFR 180.142(c) for residues of the herbicide, plant regulator, and fungicide 2,4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in/on rice, wild, grain at 0.05 ppm.

Currently, there is a tolerance for residues of 2,4-D in potable water at 0.1(N) ppm in 40 CFR 180.142(a). Pesticide residues in water are now under the purview of EPA's Office of Water where a maximum contaminant level of 0.07 ppm has been established for 2,4-D in drinking water. Sugarcane bagasse is no longer considered a significant animal feed item; therefore, the Agency has determined the tolerance on sugarcane bagasse is no longer needed and should be revoked. Based on available field trial data that indicate residues of 2,4-D as high as 0.095 ppm, <0.05 ppm, and 0.16 ppm in/on filberts, pecans, and almonds, respectively, the Agency has determined the tolerance should be maintained at 0.2 ppm in/on nuts. EPA is also revising commodity terminology to conform to current Agency practice. Therefore, EPA proposes revoking the potable water tolerance at 0.01(N) ppm and sugarcane bagasse at 5 ppm in newly revised 40 CFR 180.142(a), and revising the tolerance in 180.142(a) in/on nut to nut, tree, group 14.

There are tolerances listed in newly revised 40 CFR 180.142(a) (formerly 40 CFR 180.142(a)(6)) that regulate ''crops in paragraph (c) of this section at 1.0 ppm'' and ''crops groupings in paragraph (c) of this section at 1.0 ppm'' that should be removed because tolerances in newly recodified 40 CFR 180.142(a) and (d) will be sufficient to cover inadvertent residues in irrigated crops to which these tolerances originally referred. Tolerances also exist in newly revised 40 CFR 180.142(a) (formerly 40 CFR 180.142(a)(12) and 13)) as follows; ''2 ppm in the milled fractions (except flour) derived from barley, oats, rye, and wheat to be ingested as food or be converted to food'' and ''2 ppm in the milled fractions derived from barley, oats, rye, and wheat to be ingested as animal feed or converted into animal feed'' should be removed because tolerances for direct and inadvertent residues of 2,4-D in barley, rye and wheat bran are newly established in newly revised 40 CFR 180.142(a) and tolerances in other small grain processed products are not necessary as residues do not concentrate upon processing. Therefore, EPA is proposing to remove the tolerances in newly revised 40 CFR 180.142(a) ''crops in paragraph (c) of this section at 1.0 ppm''; ''crops groupings in paragraph (c) of this section at 1.0 ppm''; ''2 ppm in the milled fractions (except flour) derived from barley, oats, rye, and wheat to be ingested as food or be converted to food''; and ''2 ppm in the milled fractions derived from barley, oats, rye, and wheat to be ingested as animal feed or converted into animal feed.''

The proposed tolerance actions herein for 2,4-D, to implement the recommendations of the 2,4-D RED, reflect use patterns in the U.S. which support a different tolerance than the Codex level on berries; citrus; meat byproducts; grass hay and fodder; corn forage and fodder; meat; pome fruits; potato; rice, grain; sorghum grain; soybeans; and wheat straw because of differences in good agricultural practices. However, compatibility currently exists or will exist between the proposed reassessed U.S. tolerances and Codex MRLs for 2,4-D residues in or on corn grain, rice straw, rye grain, sorghum forage, stone fruits, sugarcane, sweet corn, tree nuts, and wheat grain.

3. *Dodine.* Based on available field trial data that indicate residues of dodine as high as 2.2 ppm in/on cherries and to harmonize with the Codex MRL of 3 ppm, the Agency has determined that the tolerance should be decreased to 3.0 ppm on cherry, sweet and cherry, tart. Therefore, EPA

proposes decreasing the tolerance in 40 CFR 180.172(a) for residues of dodine in or on cherry, sweet from 5.0 to 3.0 ppm and cherry, tart from 5.0 to 3.0 ppm.

Based on the available apple field trial and processing data that indicate residues of dodine are as high as 2.58 ppm in/on apples and a concentration factor of 5.13x in apple pomace (wet), the Agency has determined that a tolerance should be established in/on apple, wet pomace at 15.0 ppm. Therefore, EPA proposes establishing a tolerance in 40 CFR 180.172(a) for residues of dodine in/on apple, wet pomace at 15.0 ppm.

Based on the results of the dodine animal metabolism study, there is no reasonable expectation of finite residues in animal tissues or milk (category 3 of 40 CFR 180.6(a)(3)); therefore, the Agency has determined that the tolerances for milk and meat are no longer needed and should be revoked. In the RED, a tolerance for plum was recommended at 5 ppm; however, there are no longer any uses in/on plums so the tolerance is not being established. Additionally, use of dodine on spinach is no longer a registered use, the Agency has determined the regional tolerance for spinach at 12.0 ppm should be revoked. Therefore, EPA is proposing to revoke tolerances in 40 CFR 180.172(a) for residues of dodine in/on meat and milk at 0 ppm and 40 CFR 180.172(b) for residues of dodine in/on spinach at 12.0 ppm and reserve and redesignate paragraph (b) as paragraph (c) for tolerances with regional registrations.

In order to conform to the adopted format in the CFR for 40 CFR part 180, EPA proposes revising 40 CFR 180.172 by adding paragraph (b) section 18 emergency exemptions—reserved; and paragraph (d) for indirect and inadvertent residues—reserved.

Compatibility of U.S. tolerances and Codex MRLs exist for dodine residues in/on apples, pears, and peaches and will exist between the proposed reassessed U.S. tolerances and Codex MRLs in or on sweet and tart cherries.

4. *DCPA.* There are currently no registered uses for DCPA on corn, lettuce, rutabaga and soybean; however, the tolerances are being retained to cover any inadvertent residues from the rotation of crops to previously DCPA treated fields/crops (1998 RED page 23). EPA is also revising commodity terminology to conform to current Agency practice. Therefore, EPA is proposing to transfer and revise tolerances in 40 CFR 180.185(a) to 40 CFR 180.185(d) for the combined inadvertent residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate acid (MTP) and terachlorophthalic acid (TCP) (calculated as DCPA) in or on corn, field, forage; corn, field stover; corn, pop, forage; corn, pop, stover; corn, sweet, forage; corn, sweet, stover at 0.4 ppm; corn, grain (including pop and field) at 0.05 ppm to corn, pop, grain at 0.05 ppm and corn, field, grain at 0.05 ppm; corn, sweet, kernel plus cob with husks removed at 0.05 ppm; lettuce at 2 ppm to 2.0 ppm; rutabagas at 2 ppm to rutabaga at 2.0 ppm; and soybean at 2 ppm to 2.0 ppm.

Currently, the tolerances for basil, fresh leaves and basil, dried leaves are 20.0 ppm and 5.0 ppm, respectively, as published August 20, 2004 (69 FR 51571) (FRL–7673–6), and were intended for inadvertent residues rather than direct use tolerances. These tolerances should be corrected, switching the tolerance levels to basil, fresh leaves at 5.0 ppm and basil, dried leaves at 20.0 ppm and designated as inadvertent residue tolerances. Therefore, EPA is proposing to correct and transfer the tolerances in 40 CFR 180.185(a) to 40 CFR 180.185(d) for the combined inadvertent residues of the herbicide DCPA and its metabolites MTP and TCP (calculated as DCPA) in or on basil, fresh leaves from 20.0 to 5.0 ppm and basil, dried leaves from 5.0 to 20.0 ppm.

The tolerances for celeriac, chicory, chive, coriander, dill, marjoram, parsley, radicchio, and oriental radish as published August 20, 2004 (69 FR 51571) (FRL–7673–6), were tolerances intended to cover inadvertent residues rather than direct use residues. Therefore, EPA is proposing to transfer the tolerances in 40 CFR 180.185(a) to 40 CFR180.185(d) for the combined inadvertent residues of the herbicide DCPA and its metabolites MTP and TCP (calculated as DCPA) in or on celeriac at 2.0 ppm; chicory, roots at 2.0 ppm; chicory, tops at 5.0 ppm; chive at 5.0 ppm; coriander, leaves at 5.0 ppm; dill at 5.0 ppm; marjoram at 5.0 ppm; parsley, leaves at 5.0 ppm; parsley, dried leaves at 20.0 ppm; radicchio at 5.0 ppm; and radish, oriental at 2.0 ppm.

There are currently no registered uses for DCPA in or on beans (field, mung and succulent), cotton, cucumbers, eggplants, peppers, blackeyed peas, potatoes, squash (winter and summer), sweet potatoes, turnips, leafy brassica vegetables and yams as published August 20, 2004 (69 FR 51571) (FRL–7673–6). However, the tolerances are being retained to cover any inadvertent residues from rotation of crops to previously DCPA treated fields/crops. EPA is also revising commodity terminology to conform to current Agency practice. Therefore, EPA is proposing to revise and transfer tolerances in 40 CFR 180.185(a) to 40 CFR 180.185(d) for the combined inadvertent residues of the herbicide DCPA and its metabolites MTP and TCP (calculated as DCPA) in or on bean, field, dry to bean, dry; bean, mung, seed at 2 ppm; bean, snap, succulent at 2 ppm; cotton, undelinted seed at 0.2 ppm; cucumber at 1.0 ppm; eggplant at 1.0 ppm; pepper at 2 ppm; pimento at 2 ppm; potato at 2 ppm; squash, summer at 1.0 ppm; squash, winter at 1 ppm; pea, blackeyed to pea, blackeyed, seed; radish, oriental to radish, oriental, roots and radish, oriental, tops; sweet potato, roots to sweet potato; turnip to turnip, roots; turnip, greens to turnip, tops; vegetable, brassica, leafy, group 5 at 5 ppm; and yam, true, tuber at 2 ppm.

In addition, EPA is proposing to revise commodity terminology and tolerances to conform to current Agency practice in 40 CFR 180.185(a) for the combined residues of the herbicide DCPA and its metabolites MTP and TCP (calculated as DCPA) in or on melon, honeydew to muskmelon; and onion to onion, bulb.

The are no registered uses for upland cress; therefore, the tolerance is no longer appropriate. Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.185(a) in/on cress, upland at 5 ppm.

Currently, there are no Codex MRLs in place for DCPA.

5. *Endothall.* Tolerances are currently established for rice, grain and rice, straw at 0.05(N) ppm. The ''N'' indicating negligible residues should be deleted in accordance with current Agency practice in 40 CFR 180.293 for the endothall residues of concern in or on rice, grain from 0.05(N) ppm to 0.05 ppm and rice, straw from 0.05(N) ppm to 0.05 ppm.

There is currently an interim tolerance established in 40 CFR 180.293(a)(2) for endothall residues of concern for potable water at 0.2 ppm. EPA's Office of Pesticide Programs no longer regulates pesticides in water by establishing tolerances, but rather by EPA's Office of Water where an appropriate Maximum Concentration Level has been established. Therefore, EPA is proposing to revoke the interim tolerance of 0.2 ppm in 40 CFR 180.293 (a)(2) and redesignating 40 CFR 180.293 (a)(1) and (a)(2) as 40 CFR 180.293(a).

EPA is proposing to revise commodity terminology to conform to current Agency practice in newly revised 40 CFR 180.293(a) from hop to hop, dried cones.

Currently, there are no Codex MRLs in place for endothall.

6. *Propyzamide (or pronamide).* Currently, 40 CFR 180.317(a) regulates the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) and in 40 CFR 180.317(b) only the parent, propyzamide is regulated in error. The Agency has determined the residues for regulation should be corrected in 40 CFR 180.317(b) to include the metabolites. Therefore, EPA proposes correcting the regulatory expression in 40 CFR 180.317(b) to regulate the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide).

Based on the available field trial data that indicate the combined residues of propyzamide are less than the level of detection (0.01 ppm) in or on artichokes, the Agency determined that the tolerance should be decreased to 0.01 ppm. Therefore, EPA proposes decreasing the tolerance in 40 CFR 180.317(a) for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on artichoke, globe from 0.1 to 0.01 ppm.

In a residue study, two groups of lactating cows were fed alfalfa hay containing 20 to 40 ppm field-aged propyzamide residues for 3 weeks resulting in residues in fat tissues ranging from <0.01 to 0.48 ppm. Based on linear extrapolation of the maximum residues observed in the study and the maximum theoretical dietary burden, the Agency determined that the cattle, goat, hog, horse, and sheep fat tolerances should be raised from 0.02 to 0.20 ppm. Therefore, EPA proposes increasing the tolerances in 40 CFR 180.317(a) for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on cattle, fat from 0.02 to 0.20 ppm; goat, fat from 0.02 to 0.20 ppm; hog, fat from 0.02 to 0.20 ppm; horse, fat from 0.02 ppm to 0.20 ppm; and sheep, fat from 0.02 to 0.20 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Tolerances are typically not established for poultry kidneys, consequently, the associated tolerance is not necessary and the Agency determined that the tolerance for poultry, kidney at 0.2 ppm should be revoked. Concomitant with revoking the poultry, kidney tolerance, the tolerance for poultry, meat byproducts (except kidney, liver) should be revised to poultry, meat byproducts, except liver. Therefore, EPA proposes revoking the tolerance in 40 CFR 180.317(a) for the combined propyzamide residues of concern in or on poultry, kidney and revising the tolerance poultry, meat byproducts, (except kidney, liver) to poultry, meat byproducts, except liver.

Based on available confined accumulation in rotational crops data that indicate residues of propyzamide and its metabolites are as high as 0.10 ppm in wheat forage; 0.038 ppm in wheat, grain, and 0.181 ppm in wheat, straw, the Agency determined that tolerances for inadvertent or indirect residues should be established in/on cereal, grain, forage at 0.6 ppm; cereal, grain, hay at 0.2 ppm; and cereal, grain, straw at 0.3 ppm. Therefore, EPA proposes establishing tolerances in 40 CFR 180.317(d) for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)benzamide) in or on grain, cereal, forage, group 16 at 0.6 ppm; grain, cereal, hay, group 16 at 0.2 ppm; and grain, cereal, straw, group 16 at 0.3 ppm.

Based on the available field trial data that indicate the combined residues of propyzamide are as high as 8.68 ppm in/on alfalfa seed, the Agency determined that a tolerance should be established in/on alfalfa, seed at 10.0 ppm. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.317(a) for the combined propyzamide residues of concern in/on alfalfa, seed at 10.0 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

EPA is also revising commodity terminology to conform to current Agency practice. Therefore, EPA proposes modifying a tolerance in 40 CFR 180.317(a) in/on lettuce to lettuce, head; fruit, stone to fruit, stone group 12; nongrass animal feeds to animal feed, nongrass, group 18; radicchio, greens (tops) to radicchio; cattle, meat byproducts, except kidney, liver; goat, meat byproducts, except kidney, liver; hog, meat byproducts, except kidney, liver; horse, meat byproducts, except kidney, liver; sheep, meat byproducts, except kidney, liver to cattle, meat byproducts, except kidney and liver; goat, meat byproducts, except kidney and liver; hog, meat byproducts, except kidney and liver; horse, meat byproducts, except kidney and liver; and sheep, meat byproducts, except kidney and liver and in 40 CFR 180.317(c) in/on pea, dried, winter to pea, field, seed.

Currently, there are no Codex MRLs in place for propyzamide.

7. *Ethofumesate.* Tolerances in 40 CFR 180.345(a)(1) and (a)(2) are regulated for the combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as parent compound in/on raw agricultural commodities for (a)(1) and in/on the processed feeds when present as a result of application to growing crops. When the residues of concern are the same for both processed feeds and the raw agricultural commodities, it is administrative practice to regulate them in the same paragraph. Therefore, EPA proposes combining the tolerances in 40 CFR 180.345(a)(1) and (a)(2) into 40 CFR 180.345(a).

As there are presently no regulated poultry or swine feed items associated with the registrated uses of ethofumesate, the hog fat, meat, and meat byproduct tolerances are no longer needed. Also, based on available field trial data that indicate residues of ethofumesate and its regulated metabolites are as high as 0.25 ppm in/on sugar beet roots, 3.1 ppm in/on sugar beet tops, 4.28 ppm in/on garden beet tops, the Agency determined that the tolerances should be increased to 0.3 ppm on sugar beet roots, 4.0 ppm sugar beet tops, and 5.0 ppm in/on garden beet tops. Therefore, EPA is proposing to revoke the tolerances in newly revised 40 CFR 180.345(a) for the combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as parent compound in/on hog, fat at 0.05 ppm, hog, meat at 0.05 ppm and hog, meat byproducts at 0.05 ppm. Also, EPA proposes increasing the tolerances in/on beet, sugar, roots from 0.1 to 0.3 ppm; beet, sugar, tops from

1.00 to 4.0 ppm; beet, garden, tops from 4.0 to 5.0 ppm in newly revised 40 CFR 180. 345(a). The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on the 0.5x processing factor for refined sugar and the highest average field trial residues of 0.25 ppm in beet roots, the expected combined ethofumesate residues of concern would be 0.125 ppm in refined sugar; therefore, the Agency has determined the tolerance for refined sugar should be 0.20 ppm. EPA is also modifying commodity terminology to conform to current Agency practice. Therefore, EPA is proposing to establish the tolerances in newly revised 40 CFR 180.345(a) for the combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as parent compound in/on beet, sugar, refined sugar at 0.20 ppm. Also, EPA proposes modifying tolerances in newly recodified 40 CFR 180.345(a) from sugar beet molasses to beet, sugar, molasses.

Since publication of the RED, EPA established tolerances in 40 CFR 180.345 in/on garden beets, sugar beets and carrots.

Currently, there are no Codex MRLs in place for ethofumesate.

8. *Permethrin.* The tolerance on cotton, undelinted seed at 0.5 ppm in 40 CFR 180.378(a) expired on November 15, 1997, and should be removed from the CFR. Because the only tolerance in 40 CFR 180.378(a) has expired, EPA proposes removing existing 40 CFR 180.378(a) in its entirety. Currently, tolerances in 40 CFR 180.378(b) permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate], DCVA [3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate], and MPBA [3-phenoxyphenyl)methanol (3-phenoxybenzoic acid)] on plant commodities; 180.378(c) permethrin, DCVA, MPBA, and 3-phenoxybenzoic acid (3-PBA) in/on animal commodities; and 180.378(d) regional registrations are regulated for permethrin, DCVA and MPBA. Based on new toxicity studies and structural (molecular level) activity relationship (SAR) considerations, the Agency determined that residues of concern for regulation should consist of the cis- and trans-permethrin isomers for both plant and animal commodities. (This change also harmonizes the residues for regulation with MRLs for Codex, Canada and Mexico.) Consequently, the existing separation of plant tolerances in 40 CFR 180.378(b) and animal tolerances in 180.378(c) is no longer needed and should be combined into newly revised 40 CFR 180.378(a). Regional tolerances in 40 CFR 180.378(d) should be transferred to 180.378(c), and newly revised paragraph (b) and (d) should be established and reserved for section 18 emergency exemptions and indirect or inadvertent residues, respectively, in order to conform to current Agency practice. Therefore, EPA proposes changing the tolerance expression and transferring tolerances in 40 CFR 180.378(b) and (c) into 40 CFR 180.378(a) for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/on food commodities; reserving 40 CFR 180.378(b) for section 18 exemptions; transferring the tolerances in 40 CFR 180.378(d) to 40 CFR 180.378 (c) tolerances with regional registrations for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/on food commodities; and reserving 40 CFR 180.378(d) for indirect or inadvertent residues.

EPA is modifying commodity terminology to conform to current Agency administrative practice and based on available field trial data that indicate residues of permethrin as high as 15.2 ppm in/on alfalfa (fresh), 44.5 ppm in/on alfalfa hay, 4.0 ppm in/on globe artichokes, 0.32 ppm in/on cauliflower, 42.6 ppm in/on corn forage, 27.1 ppm in/on field and sweet corn stover, 0.26 ppm in/on eggplant, 0.48 ppm in/on horseradish, 4.9 ppm in/on mushrooms, 0.92 ppm in/on peaches, <0.02 ppm in/on pears and apples, 0.47 in/on bell peppers, 1.27 ppm in/on squash, 0.52 ppm in/on cucumbers and 1.2 ppm in/on melons (where squash, cucumber and melon are representative of the vegetable cucurbit group 9); the Agency determined that the tolerance should be decreased to 20.0 ppm in/on alfalfa, forage; 45 ppm in/on alfalfa, hay; 5.0 ppm in/on artichoke, globe; 0.50 ppm in/on cauliflower; 0.50 ppm in/on eggplant; 0.5 ppm in/on horseradish; 5.0 ppm in/on mushroom; 0.50 ppm in/on pepper, bell; 1.0 ppm in/on peach; 0.05 ppm in/on fruit, pome, group 11 (in place of individual apple and pear tolerances); 1.50 ppm in/on vegetable, cucurbit, group 9. The Agency also determined that the tolerances should be decreased and separated (by field, sweet, and pop varieties) for corn, forage; and corn, stover as follows: 50 ppm in/on corn, field, forage; 50 ppm in/on corn, sweet, forage; 30 ppm in/on corn, field, stover; 30 ppm in/on corn, pop, stover; and 30 ppm in/on corn, sweet, stover. Therefore, EPA proposes decreasing and revising tolerances in newly revised 40 CFR 180.378(a) for the combined permethrin residues of concern in/on alfalfa, forage from 25.0 to 20 ppm; alfalfa, hay from 55.0 to 45 ppm; artichoke, globe from 10.0 to 5.0 ppm; cauliflower from 1.0 to 0.50 ppm; corn, forage from 60.0 ppm to corn, field, forage at 50 ppm and corn, sweet, forage at 50 ppm; corn, stover at 60.0 ppm to corn, field, stover at 30 ppm and corn, pop, stover at 30 ppm and corn, sweet, stover at 30 ppm; eggplant from 1.0 to 0.50 ppm; horseradish from 1.0 to 0.50 ppm; mushroom from 6.0 to 5.0 ppm; pepper, bell from 1.0 to 0.5 ppm; peach from 5.0 to 1.0 ppm; apple at 0.05 ppm and pear at 3.0 ppm to fruit, pome, group 11 at 0.05 ppm; vegetable, cucurbit, group 9 from 3.0 to 1.50 ppm.

Based on a cattle/ruminant feeding study (at 10 and 50 ppm) and the maximum theoretical dietary burden (MTDB) of 40.3 ppm for dairy cattle, the maximum expected residues of permethrin would be 0.088 ppm in whole milk (2.20 ppm in milk fat), 0.064 ppm in meat, 0.88 ppm in fat, and 0.048 ppm in meat byproducts, the Agency determined the tolerances should be 1.5 ppm for cattle, goat, horse, and sheep fat; 0.10 ppm for cattle, goat, horse, and sheep meat; 0.10 ppm for cattle, goat, horse, and sheep meat byproducts; and 3.0 ppm for milk, fat. A hog feeding study is not available; however, the maximum potential residues resulting from dietary exposure can be estimated for hogs using data from the above ruminant feeding study. The 10 ppm feeding level in the cattle feeding study is equivalent to 167x the MTDB for swine. The maximum expected residues for permethrin in hogs would be <0.01 ppm in meat, meat byproducts, and in fat; therefore, the Agency has determined the tolerances should be 0.05 ppm for hog fat, meat and meat byproducts. Based on poultry feeding studies and the MTDB of 4.05 ppm and 11 ppm for poultry, the maximum potential residues of permethrin would

be 0.025 ppm in eggs; <0.01 ppm in liver; 0.009 ppm in muscle; and 0.25–0.30 ppm in fat, the Agency determined the tolerances should be 0.10 ppm for egg and 0.05 ppm for poultry meat byproducts. Therefore, EPA proposes decreasing and modifying tolerances in newly revised 40 CFR 180.378(a) for the combined permethrin residues of concern in/on cattle, fat from 3.0 to 1.50 ppm; cattle, meat from 0.25 to 0.10 ppm; cattle, meat byproducts from 2.0 to 0.10 ppm; egg from 1.0 to 0.10 ppm; goat, fat from 3.0 to 1.50 ppm; goat, meat from 0.25 to 0.10 ppm; goat, meat byproducts from 2.0 to 0.10 ppm; hog, fat from 3.0 to 0.05 ppm; hog, meat from 0.25 to 0.05 ppm; hog, meat byproducts from 3.0 to 0.05 ppm; horse, fat from 3.0 to 1.50 ppm; horse, meat from 0.25 to 0.10 ppm; horse, meat byproducts from 2.0 to 0.10 ppm; milk, fat (reflecting 0.25 ppm in whole milk) from 6.25 to milk, fat (reflecting 0.88 ppm in whole milk) at 3.0 ppm; poultry, meat byproducts from 0.25 to 0.05 ppm; sheep, fat from 3.0 to 1.50 ppm; sheep, meat from 0.25 to 0.10 ppm; and sheep, meat byproducts from 2.0 to 0.10 ppm.

Based on available field trial data that indicate residues of permethrin as high as 11.27 ppm in/on collards, 8.25 ppm in/on turnip greens and 0.12 ppm in/on turnip roots, the Agency determined that the tolerance should be decreased to 15 ppm in/on collards; 10 ppm in/on turnip, greens; and 0.20 ppm in/on turnip, roots. Therefore, EPA proposes decreasing and revising tolerances in newly revised 40 CFR 180.378(c) for the combined permethrin residues of concern in/on collards from 20 to 15 ppm; turnip, greens from 20 ppm to turnip, tops at 10 ppm; and turnip, roots from 1 to 0.20 ppm. EPA also proposes recodifying and revising grass, range at 15 ppm in newly revised 40 CFR 180.378(a) to 40 CFR 180.378(c) as grass, hay at 15 ppm and grass, forage at 15 ppm.

Based on available field trial data that indicate residues of permethrin as high as 1.24 ppm in/on asparagus, 1.76 ppm in/on broccoli, and 3.94 ppm in/on cherries, the Agency determined that the tolerance should be increased to 2.0 ppm in/on asparagus, 2.0 ppm in/on broccoli, and 4.0 ppm in/on cherry. Therefore, EPA proposes increasing and revising tolerances in newly revised 40 CFR 180.378(a) for the combined permethrin residues of concern in/on asparagus from 1.0 to 2.0 ppm; broccoli from 1.0 to 2.0 ppm; and cherry from 3.0 to cherry, sweet at 4.0 ppm and cherry, tart at 4.0 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that indicate residues of permethrin as high as 4.0 ppm in/on celery, the Agency has determined the individual tolerance on celery should be replaced with the leaf petioles subgroup 4B at 5.0 ppm. Based on available data that indicate residues of permethrin as high as 0.386 ppm in/on aspirated grain fractions, the Agency has determined the tolerance should be established for grain, aspirated fractions at 0.50 ppm. Therefore, EPA proposes establishing the tolerance in newly revised 40 CFR 180.378(a) for the combined permethrin residues of concern in/on grain, aspirated fractions at 0.50 ppm and revising from celery to leaf petioles subgroup 4B at 5.0 ppm.

EPA is also modifying commodity terminology to conform to current Agency administrative practice; therefore, the Agency proposes revising the terminology for tolerances in newly revised 40 CFR 180.378(a) for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and its cis- andtrans-isomers in/on corn, grain to corn, field, grain and corn, pop, grain; filbert to hazelnut; onion, dry bulb to onion, bulb; garlic to garlic, bulb; and soybean to soybean, seed.

The proposed tolerance actions herein for permethrin, to implement the recommendations of the permethrin RED, reflect use patterns in the U.S. which support a different tolerance than the Codex level on pome fruit, asparagus, eggplant, cherries, peaches, bell peppers, and meats of cattle, goats, hogs, horses, sheep and poultry because of differences in good agricultural practices and determination of secondary residue levels in livestock commodities. However, compatibility currently exists with potatoes and soybean seed, and will exist between the proposed reassessed U.S. tolerances and Codex MRLs for permethrin residues in or on broccoli, cauliflower, eggs, and horseradish.

9. *Dimethipin.* The available animal feeding study data reflecting exaggerated dosing levels indicate that there is no expectation of finite residues (category 3 of 40 CFR 180.6(a)(3)) in the fat, meat, and meat byproducts of cattle, goats, hogs, horses, and sheep so that a tolerance is not necessary for the fat, meat and meat byproducts of cattle, goats, hogs, horses, and sheep and should be revoked. However, the Agency has decided to retain the tolerances in the meat and meat byproducts of cattle, goats, hogs, horses, and sheep solely to harmonize with Codex MRLs. Therefore, the Agency has determined to retain and decrease the tolerances from 0.02 to 0.01 ppm in meat and meat byproducts of cattle, goats, hogs, horses, and sheep to harmonize with current Codex MRLs (which were reduced from 0.02 ppm to 0.01 ppm since publication of the RED). Therefore, EPA proposes revoking the tolerances in 40 CFR 180.406(a) for dimethipin residues of concern in or on cattle, fat at 0.02 ppm; goat, fat at 0.02 ppm; hog, fat at 0.02 ppm, horse, fat at 0.02 ppm and sheep fat at 0.02 ppm and decreasing the tolerances in/on cattle, meat from 0.02 to 0.01 ppm; cattle, meat byproducts from 0.02 to 0.01 ppm; goat, meat from 0.02 to 0.01 ppm; goat, meat byproducts from 0.02 to 0.01 ppm; hog, meat from 0.02 to 0.01 ppm; hog, meat byproducts from 0.02 to 0.01 ppm; horse, meat from 0.02 to 0.01 ppm; horse, meat byproducts from 0.02 to 0.01 ppm; sheep, meat from 0.02 to 0.01 ppm; and sheep, meat byproducts from 0.02 to 0.01ppm.

Tolerances are currently established on cotton, undelinted seed at 0.05 ppm and cotton, hulls at 0.7 ppm. Because the processing data for cotton, hulls indicate an average concentration factor of 0.95x, tolerances for cotton, hulls are not necessary since residues do not concentrate and the tolerance for cotton, undelinted seed will cover residues on cotton hulls. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.406(a) for dimethipin residues of concern in/on cotton, hulls at 0.7 ppm.

Currently, the Codex MRLs and U.S. tolerances for dimethipin are not harmonized in/on cotton seed and cotton seed oil because of differences in good agricultural practices. However, the proposed tolerance actions herein to implement the dimethipin RED will harmonize U.S. tolerances and Codex MRLs in or on meat and meat byproducts of cattle, goats, hogs, horses and sheep.

10. *Fenarimol.* Currently, the tolerance in 40 CFR 180.421(a) for residues of fenarimol in/on apple is 0.1 ppm (September 15, 2006, 71 FR 54423) (FRL–8077–9). The Codex MRL is 0.3 ppm. EPA proposes increasing the tolerances in 40 CFR 180.421(a) for residues of fenarimol in/on apple from 0.1 to 0.3 ppm in order to harmonize with Codex in response to concerns raised by the Chinese after publication of the September 15, 2006 **Federal Register** rulemaking. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

11. *Fomesafen.* Currently, the tolerance in 40 CFR 180.433(a) for residues of fomesafen in/on bean, dry and bean, snap, succulent are each 0.025 ppm (May 3, 2006 (71 FR 25945) (FRL–8062–6). The Canadian MRL is 0.05 ppm bean, dry and bean, snap, succulent. EPA proposes increasing the tolerances in 40 CFR 180.433(a) for residues of fomesafen in/on bean, dry and bean, snap, succulent from 0.025 to 0.05 ppm in order to harmonize with the Canadian MRLs in support of North American Free Trade Agreement (NAFTA). The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

*B. What is the Agency's Authority for Taking this Action?*

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the Food Quality Protection Act (FQPA). The safety finding determination is discussed in detail in each post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for 2,4-D, dodine, DCPA, endothall, ethofumesate, permethrin, and dimethipin, and TREDs for captan, propyzamide, and fenarimol, whose REDs were both completed prior to FQPA.[1] REDs and TREDs contain the Agency's evaluation of the data for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.

[1] A RED for fomesafen was not needed because it was registered after November 1, 1984 and not subject to reregistration eligibility, and its tolerances were reassessed prior to completion of a TRED, such that a RED for fomesafen was no longer needed because EPA made a safety finding which reassessed its tolerances according to FQPA standards.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this proposed rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

*C. When do These Actions Become Effective?*

EPA is proposing that modifications, establishment, commodity terminology revisions, and revocation of these tolerances become effective on the date of publication of the final rule in the **Federal Register** because (1) with respect to the revocations, their associated uses have been canceled for several years and (2) none of the other tolerance actions proposed here are expected to result in adulterated commodities. The Agency believes that with respect to the tolerances proposed for revocation, treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from a tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

## III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international MRLs established by the Codex Alimentarius Commission, as required by section 408(b)(4) of the FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level in a notice published for public comment. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs and TREDs, and in the Residue Chemistry document which supports the RED and TRED, as mentioned in Unit II.A. Specific tolerance actions in this proposed rule and how they compare to Codex MRLs (if any) are discussed in Unit II.A.

## IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), or also modify and revoke specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted these types of actions (e.g., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to

any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticides named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 30, 2007.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. Section 180.103 is revised to read as follows:

**§ 180.103 Captan; tolerances for residues.**

(a)(1) *General.* Tolerances are established for residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Almond | 0.25 |
| Almond, hulls | 75.0 |
| Animal feed, nongrass, group 18 | 0.05 |
| Apple | 25.0 |
| Apricot | 10.0 |
| Blueberry | 20.0 |
| Caneberry, subgroup 13A | 25.0 |
| Cherry, sweet | 50.0 |
| Cherry, tart | 50.0 |
| Cotton, undelinted seed | 0.05 |
| Dill, seed | 0.05 |
| Flax, seed | 0.05 |
| Grape | 25.0 |
| Grain, cereal, forage, fodder and straw, group 16 | 0.05 |
| Grain, cereal, group 15 | 0.05 |
| Grass, forage | 0.05 |
| Grass, hay | 0.05 |
| Nectarine | 25.0 |
| Okra | 0.05 |
| Peach | 15.0 |
| Peanut | 0.05 |
| Peanut, hay | 0.05 |
| Pear | 25.0 |
| Plum, prune, fresh | 10.0 |
| Rapeseed, forage | 0.05 |
| Rapeseed, seed | 0.05 |
| Safflower, seed | 0.05 |
| Sesame, seed | 0.05 |
| Strawberry | 20.0 |
| Sunflower, seed | 0.05 |
| Vegetable, brassica leafy, group 5 | 0.05 |
| Vegetable, bulb, group 3 | 0.05 |
| Vegetable, cucurbit, group 9 | 0.05 |
| Vegetable, foliage of legume, group 7 | 0.05 |
| Vegetable, fruiting, group 8 | 0.05 |
| Vegetable, leafy, except brassica, group 4 | 0.05 |
| Vegetable, leaves of root and tuber, group 2 | 0.05 |
| Vegetable, legume, group 6 | 0.05 |
| Vegetable, root and tuber, group 1 | 0.05 |

(2) Tolerances are established for the combined residues of the fungicide, captan (N-trichloromethylthio-4-cyclohexene-1,2-dicarboximide) and its metabolite 1,2,3,6-tetrahydrophthalimide (THPI), measured at THPI, in or on the following commodities:

| Commodity | Parts per million |
|---|---|
| Cattle, fat | 0.15 |
| Cattle, meat | 0.20 |
| Cattle, meat byproducts | 0.30 |
| Goat, fat | 0.15 |
| Goat, meat | 0.20 |
| Goat, meat byproducts | 0.30 |
| Hog, fat | 0.15 |
| Hog, meat | 0.20 |
| Hog, meat byproducts | 0.30 |
| Horse, fat | 0.15 |
| Horse, meat | 0.20 |
| Horse, meat byproducts | 0.30 |
| Milk | 0.10 |
| Sheep, fat | 0.15 |
| Sheep, meat | 0.20 |
| Sheep, meat byproducts | 0.30 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

3. Section 180.142 is revised to read as follows:

**§ 180.142 2, 4-D; tolerances for residues**

(a) *General.* Tolerances are established for residues of the herbicide, plant regulator, and fungicide 2, 4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Almond hulls | 0.1 |
| Asparagus | 5.0 |
| Barley, bran | 4.0 |
| Barley, grain | 2.0 |
| Barley, straw | 50 |

| Commodity | Parts per million |
|---|---|
| Berry, group 13 | 0.2 |
| Cattle, fat | 0.3 |
| Cattle, kidney | 4.0 |
| Cattle, meat | 0.3 |
| Cattle, meat byproducts, except kidney | 0.3 |
| Corn, field, forage | 6.0 |
| Corn, field, grain | 0.05 |
| Corn, field, stover | 50 |
| Corn, pop, grain | 0.05 |
| Corn, pop, stover | 50 |
| Corn, sweet, forage | 6.0 |
| Corn, sweet, kernel plus cob with husks removed | 0.05 |
| Corn, sweet, stover | 50 |
| Fish | 0.1 |
| Fruit, citrus, group 10 | 3.0 |
| Fruit, pome, group 11 | 0.1 |
| Fruit, stone, group 12 | 0.1 |
| Goat, fat | 0.3 |
| Goat, kidney | 4.0 |
| Goat, meat | 0.3 |
| Goat, meat byproducts, except kidney | 0.3 |
| Grain, aspirated fractions | 40 |
| Grape | 0.1 |
| Grass, forage | 360 |
| Grass, hay | 300 |
| Hop, dried cones | 0.2 |
| Horse, fat | 0.3 |
| Horse, kidney | 4.0 |
| Horse, meat | 0.3 |
| Horse, meat byproducts, except kidney | 0.3 |
| Millet, forage | 25 |
| Millet, grain | 2.0 |
| Millet, straw | 50 |
| Milk | 0.05 |
| Nut, tree, group 14 | 0.2 |
| Oat, forage | 25 |
| Oat, grain | 2.0 |
| Oat, straw | 50 |
| Pistachio | 0.05 |
| Potato | 0.4 |
| Rice, grain | 0.5 |
| Rice, hulls | 2.0 |
| Rice, straw | 10 |
| Rye, bran | 4.0 |
| Rye, forage | 25 |
| Rye, grain | 2.0 |
| Rye, straw | 50 |
| Sheep, fat | 0.3 |
| Sheep, kidney | 4.0 |
| Sheep, meat | 0.3 |
| Sheep, meat byproducts, except kidney | 0.3 |
| Shellfish | 1.0 |
| Sorghum, grain, forage | 0.2 |
| Sorghum, grain, grain | 0.2 |
| Sorghum, grain, stover | 0.2 |
| Soybean, forage | 0.02 |
| Soybean, hay | 2.0 |
| Soybean, seed | 0.02 |
| Strawberry | 0.1 |
| Sugarcane, cane | 0.05 |
| Sugarcane, molasses | 0.2 |
| Vegetable, leaves of root and tuber, except potato, group 2 | 0.1 |
| Vegetable, root and tuber, except potato, group 1 | 0.1 |
| Wheat, bran | 4.0 |
| Wheat, forage | 25 |
| Wheat, grain | 2.0 |
| Wheat, straw | 50 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for residues of the herbicide, plant regulator, and fungicide 2, 4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Rice, wild, grain | 0.05 |

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of the herbicide, plant regulator, and fungicide 2, 4-D (2,4-dichlorophenoxyacetic acid), both free and conjugated, determined as the acid, in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Animal feed, nongrass, group 18 | 0.2 |
| Avocado | 0.05 |
| Dill, seed | 0.05 |
| Cotton, undelinted seed | 0.05 |
| Okra | 0.05 |
| Vegetable, brassica leafy, group 5 | 0.4 |
| Vegetable, bulb, group 3 | 0.05 |
| Vegetable, cucurbit, group 9 | 0.05 |
| Vegetable, foliage of legume, group 7 | 0.2 |
| Vegetable, fruiting, group 8 | 0.05 |
| Vegetable, leafy, except brassica, group 4 | 0.4 |
| Vegetable, legume, group 6 | 0.05 |

4. Section 180.172 is revised to read as follows:

**§ 180.172 Dodine; tolerances for residues.**

(a) *General.* Tolerances are established for the fungicide dodine (n-dodecylguanidine acetate) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Apple | 5.0 |
| Apple, wet pomace | 15.0 |
| Cherry, sweet | 3.0 |
| Cherry, tart | 3.0 |
| Peach | 5.0 |
| Pear | 5.0 |
| Pecan | 0.3 |
| Strawberry | 5.0 |
| Walnut | 0.3 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. Section 180.185 is revised to read as follows:

**§ 180.185 DCPA; tolerances for residues.**

(a) *General.* Tolerances for the combined residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyltetrachloroterephthalate (MTP) and tetrachloroterephthalic acid (TCP) (calculated as dimethyl tetrachloroterephthalate) are established in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Cantaloupe | 1.0 |
| Garlic | 1.0 |
| Ginseng | 2.0 |
| Horseradish | 2.0 |
| Muskmelon | 1.0 |
| Onion, bulb | 1.0 |
| Strawberry | 2.0 |
| Tomato | 1.0 |
| Watermelon | 1.0 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) for the combined inadvertent residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate acid (MTP) and terachlorophthalic acid (TCP) (calculated as DCPA) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Radish, roots | 2.0 |
| Radish, tops | 15.0 |

(d) *Indirect or inadvertent residues.* Tolerances for the combined indirect or inadvertent residues of the herbicide dimethyl tetrachloroterephthalate (DCPA) and its metabolites monomethyl tetrachloroterephthalate acid (MTP) and terachlorophthalic acid (TCP) (calculated as DCPA) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Basil, dried leaves | 20.0 |
| Basil, fresh leaves | 5.0 |
| Bean, dry | 2.0 |
| Bean, mung, seed | 2.0 |
| Bean, snap, succulent | 2.0 |
| Celeriac | 2.0 |

| Commodity | Parts per million |
|---|---|
| Chicory, roots | 2.0 |
| Chicory, tops | 5.0 |
| Chive | 5.0 |
| Coriander, leaves | 5.0 |
| Corn, field, forage | 0.4 |
| Corn, field, grain | 0.05 |
| Corn, field, stover | 0.4 |
| Corn, pop, forage | 0.4 |
| Corn, pop, grain | 0.05 |
| Corn, pop, stover | 0.4 |
| Corn, sweet, forage | 0.4 |
| Corn, sweet, kernel plus cob with husks removed | 0.05 |
| Corn, sweet, stover | 0.4 |
| Cotton, undelinted seed | 0.2 |
| Cucumber | 1.0 |
| Dill | 5.0 |
| Eggplant | 1.0 |
| Lettuce | 2.0 |
| Marjoram | 5.0 |
| Parsley, dried leaves | 20.0 |
| Parsley, leaves | 5.0 |
| Pea, blackeyed, seed | 2.0 |
| Pepper | 2.0 |
| Pimento | 2.0 |
| Potato | 2.0 |
| Radicchio | 5.0 |
| Radish, oriental, roots | 2.0 |
| Radish, oriental, tops | 2.0 |
| Rutabaga | 2.0 |
| Soybean | 2.0 |
| Squash, summer | 1.0 |
| Squash, winter | 1.0 |
| Sweet potato | 2.0 |
| Turnip, roots | 2.0 |
| Turnip, tops | 5.0 |
| Vegetable, brassica, leafy, group 5 | 5.0 |
| Yam, true, tuber | 2.0 |

6. Section 180.293 is amended by revising paragraph (a)(1) to read as follows:

**§ 180.293 Endothall; tolerances for residues.**

(a) *General.* (1) Tolerances are established for the combined residues of endothall, 7-oxabicyclo [2, 2, 1] heptane-2, 3-dicarboxylic acid and its monomethyl ester in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Cotton, undelinted seed | 0.1 |
| Fish | 0.1 |
| Hop, dried cones | 0.1 |
| Potato | 0.1 |
| Rice, grain | 0.05 |
| Rice, straw | 0.05 |

* * * * *

7. Section 180.317 is amended by revising the table in paragraph (a), and paragraphs (b), (c), and (d), to read as follows:

**§ 180.317 Propyzamide; tolerances for residues.**

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| Alfalfa, seed | 10.0 |
| Animal feed, nongrass, group 18 | 10.0 |
| Apple | 0.1 |
| Artichoke, globe | 0.01 |
| Blackberry | 0.05 |
| Blueberry | 0.05 |
| Boysenberry | 0.05 |
| Cattle, fat | 0.2 |
| Cattle, kidney | 0.4 |
| Cattle, liver | 0.4 |
| Cattle, meat | 0.02 |
| Cattle, meat byproducts, except kidney and liver | 0.02 |
| Egg | 0.02 |
| Endive | 1.0 |
| Fruit, stone, group 12 | 0.1 |
| Goat, fat | 0.2 |
| Goat, kidney | 0.4 |
| Goat, liver | 0.4 |
| Goat, meat | 0.02 |
| Goat, meat byproducts, except kidney and liver | 0.02 |
| Grape | 0.1 |
| Hog, fat | 0.2 |
| Hog, kidney | 0.4 |
| Hog, liver | 0.4 |
| Hog, meat | 0.02 |
| Hog, meat byproducts, except kidney and liver | 0.02 |
| Horse, fat | 0.2 |
| Horse, kidney | 0.4 |
| Horse, liver | 0.4 |
| Horse, meat | 0.02 |
| Horse, meat byproducts, except kidney and liver | 0.02 |
| Lettuce, head | 1.0 |
| Milk | 0.02 |
| Pear | 0.1 |
| Poultry, fat | 0.02 |
| Poultry, liver | 0.2 |
| Poultry, meat | 0.02 |
| Poultry, meat byproducts, except liver | 0.02 |
| Radicchio | 2.0 |
| Raspberry | 0.05 |
| Sheep, fat | 0.2 |
| Sheep, kidney | 0.4 |
| Sheep, liver | 0.4 |
| Sheep, meat | 0.02 |
| Sheep, meat byproducts, except kidney and liver | 0.02 |

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

| Commodity | Parts per million | Expiration/ Revocation Date |
|---|---|---|
| Cranberry | 0.05 | 12/31/09 |

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for the combined residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Pea, field, seed | 0.05 |
| Rhubarb | 0.1 |

(d) *Indirect or inadvertent residues.* Tolerances are established for the combined indirect or inadvertent residues of the herbicide propyzamide and its metabolites (containing the 3,5-dichlorobenzoyl moiety calculated as 3,5-dichloro-N(1,1-dimethyl-2-propynyl)benzamide) in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Grain, cereal, forage, group 16 | 0.6 |
| Grain, cereal, hay, group 16 | 0.2 |
| Grain, cereal, straw, group 16 | 0.3 |

8. Section 180.345 is amended by revising paragraph (a) to read as follows:

**§ 180.345 Ethofumesate; tolerances for residues.**

(a) *General.* Tolerances for the combined residues of the herbicide ethofumesate (2-ethoxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate) and its metabolites 2-hydroxy-2,3-dihydro-3,3-dimethyl-5-benzofuranyl methanesulfonate and 2,3-dihydro-3,3-dimethyl-2-oxo-5-benzofuranyl methanesulfonate both calculated as parent compound in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Beet, garden, roots | 0.5 |
| Beet, garden, tops | 5.0 |
| Beet, sugar, molasses | 0.5 |
| Beet, sugar, refined sugar | 0.2 |
| Beet, sugar, roots | 0.3 |
| Beet, sugar, tops | 4.0 |
| Cattle, fat | 0.05 |
| Cattle, meat | 0.05 |
| Cattle, meat byproducts | 0.05 |
| Garlic | 0.25 |
| Goat, fat | 0.05 |
| Goat, meat | 0.05 |
| Goat, meat byproducts | 0.05 |
| Grass, straw | 1.0 |
| Horse, fat | 0.05 |
| Horse, meat | 0.05 |
| Horse, meat byproducts | 0.05 |
| Onion, bulb | 0.25 |
| Shallot, bulb | 0.25 |
| Shallot, fresh leaves | 0.25 |
| Sheep, fat | 0.05 |
| Sheep, meat byproducts | 0.05 |

| Commodity | Parts per million |
|---|---|
| Sheep, meat | 0.05 |

* * * * *

9. Section 180.378 is revised to read as follows:

**§ 180.378 Permethrin; Tolerances for residues.**

(a) *General.* Tolerances are established for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Alfalfa, forage | 20 |
| Alfalfa, hay | 45 |
| Almond | 0.05 |
| Almond, hulls | 20 |
| Artichoke, globe | 5.0 |
| Asparagus | 2.0 |
| Avocado | 1.0 |
| Broccoli | 2.0 |
| Brussels sprouts | 1.0 |
| Cabbage | 6.0 |
| Cattle, fat | 1.5 |
| Cattle, meat | 0.10 |
| Cattle, meat byproducts | 0.10 |
| Cauliflower | 0.5 |
| Cherry, sweet | 4.0 |
| Cherry, tart | 4.0 |
| Corn, field, forage | 50 |
| Corn, field, grain | 0.05 |
| Corn, field, stover | 30 |
| Corn, pop, grain | 0.05 |
| Corn, pop, stover | 30 |
| Corn, sweet, forage | 50 |
| Corn, sweet, kernel plus cob with husks removed | 0.10 |
| Corn, sweet, stover | 30 |
| Egg | 0.10 |
| Eggplant | 0.50 |
| Fruit, pome, group 11 | 0.05 |
| Garlic, bulb | 0.10 |
| Grain, aspirated fractions | 0.50 |
| Goat, fat | 1.5 |
| Goat, meat | 0.10 |
| Goat, meat byproducts | 0.10 |
| Hazelnut | 0.05 |
| Hog, fat | 0.05 |
| Hog, meat | 0.05 |
| Hog, meat byproducts | 0.05 |
| Horse, fat | 1.5 |
| Horse, meat | 0.10 |
| Horse, meat byproducts | 0.10 |
| Horseradish | 0.50 |
| Kiwifruit | 2.0 |
| Leaf petioles subgroup 4B | 5.0 |
| Lettuce, head | 20 |
| Milk, fat (reflecting 0.88 ppm in whole milk) | 3.0 |
| Mushroom | 5.0 |
| Onion, bulb | 0.10 |
| Peach | 1.0 |
| Pepper, bell | 0.50 |
| Pistachio | 0.10 |
| Potato | 0.05 |
| Poultry, fat | 0.15 |
| Poultry, meat | 0.05 |
| Poultry, meat byproducts | 0.05 |
| Sheep, fat | 1.5 |
| Sheep, meat | 0.10 |
| Sheep, meat byproducts | 0.10 |
| Soybean, seed | 0.05 |
| Spinach | 20 |
| Tomato | 2.0 |
| Vegetable, cucurbit, group 9 | 1.5 |
| Vegetable, leafy, except brassica, group 4 | 20 |
| Walnut | 0.05 |
| Watercress | 5.0 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in § 180.1(m) are established for the combined residues of the insecticide cis- and trans-permethrin isomers [cis-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and [trans-(3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] in/on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Collards | 15 |
| Grass, forage | 15 |
| Grass, hay | 15 |
| Papaya | 1.0 |
| Turnip, tops | 10 |
| Turnip, roots | 0.20 |

(d) *Indirect or inadvertent residues.* [Reserved]

10. Section 180.406 is amended by revising the table in paragraph (a) to read as follows:

**§ 180.406 Dimethipin; tolerances for residues**

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| Cotton, undelinted seed | 0.50 |
| Cattle, meat | 0.01 |
| Cattle, meat byproducts | 0.01 |
| Goat, meat | 0.01 |
| Goat, meat byproducts | 0.01 |
| Hog, meat | 0.01 |
| Hog, meat byproducts | 0.01 |
| Horse, meat | 0.01 |
| Horse, meat byproducts | 0.01 |
| Sheep, meat | 0.01 |
| Sheep, meat byproducts | 0.01 |

* * * * *

11. Section 180.421 is amended by revising the entry for ''Apple'' in the table in paragraph (a) to read as follows:

**§ 180.421 Fenarimol; tolerances for residues**

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| Apple | 0.3 |
| * * * * | * |

* * * * *

12. Section 180.433 is amended by revising the entries for ''Bean, dry'' and ''Bean, snap, succulent'' in the table in paragraph (a) to read as follows:

**§ 180.433 Fomesafen; tolerances for residues**

(a) *General.* * * *

| Commodity | Parts per million |
|---|---|
| Bean, dry | 0.05 |
| Bean, snap, succulent | 0.05 |
| * * * * | * |

* * * * *

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 271

**[FRL–8322–4]**

## Ohio: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Ohio has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Ohio's application and has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

**DATES:** Comments on this proposed rule must be received on or before July 6, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–RCRA–2007–0397 by one of the following methods: *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

*E-mail: westefer.gary@epa.gov*.

*Mail:* Gary Westefer, Ohio Regulatory Specialist, DM–7J, U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Instructions:* Direct your comments to Docket ID Number EPA–R05–RCRA–2007–0397. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epagov/epahome/dockets.htm*.

*Docket:* All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some of the information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy. You may view and copy Ohio's application from 9 a.m. to 4 p.m. at the following addresses: U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois, contact: Gary Westefer (312) 886–7450; or Ohio Environmental Protection Agency, Lazarus Government Center, 50 West Town Street, Suite 700, Columbus, Ohio, contact: Jeff Mayhugh (614) 644–2950.

**FOR FURTHER INFORMATION CONTACT:** Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450, e-mail *westefer.gary@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What Decisions Have We Made in This Rule?

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the State is granted authorization to do so.

### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Ohio subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Ohio has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

1. Do inspections, and require monitoring, tests, analyses or reports
2. Enforce RCRA requirements and suspend or revoke permits
3. Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Ohio is being authorized by today's action are already effective, and are not changed by today's action.

### D. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

### E. What Has Ohio Previously Been Authorized for?

Ohio initially received final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 8, 1991, effective June 7, 1991 (56 FR 14203) as corrected June 19, 1991, effective August 19,1991 (56 FR 28088); July 27, 1995, effective September 25, 1995 (60 FR 38502); October 23, 1996, effective December 23, 1996 (61 FR 54950); January 24, 2003, effective January 24, 2003 (68 FR 3429); and January 20, 2006, effective January 20, 2006 (71 FR 3220).

### F. What Changes Are We Authorizing With Today's Action?

On January 22, 2007, Ohio submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Ohio's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Ohio final authorization for the following program changes:

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS

| Description of federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Toxicity Characteristic; Hydrocarbon Recovery Operations Checklist 80 as amended. | October 5, 1990, 55 FR 40834. | OAC 3745–51–04; Effective April 15, 1993. |
| Checklist 80.1 as amended | February 1, 1991, 56 FR 3978. | |
| Checklist 80.2 | April 2, 1991, 56 FR 13406. | |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces Checklist 85. | February 21, 1991, 56 FR 7134. | OAC 3745–50–10; 3745–50–11; 3745–50–40; 3745–50–44; 3745–50–51; 3745–50–66; 3745–51–02; 3745–51–04; 3745–51–06; 3745–55–12; 3745–57–40; 3745–66–12; 3745–66–13; 3745–68–40; 3745–266–100; 3745–266–101; 3745–266–102; 3745–266–103; 3745–266–104; 3745–266–105; 3745–266–106; 3745–266–107; 3745–266–108; 3745–266–109; 3745–266–110; 3745–266–111; 3745–266–112; Effective December 7, 2004. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I Checklist 94. | July 17, 1991, 56 FR 32688 | OAC 3745–50–40; 3745–50–44; 3745–50–51; 3745–50–66; 3745–51–03; 3745–51–06; 3745–68–70; 3745–266–100; 3745–266–102; 3745–266–103; 3745–266–104; 3745–266–106; 3745–266–107; 3745–266–108; 3745–266–109; 3745–266–110; 3745–266–112; Effective December 7, 2004. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces Technical Amendments II Checklist 96. | August 27, 1991, 56 FR 42504. | OAC 3745–51–02; 3745–66–12; 3745–66–13; 3745–266–100; 3745–266–102; 3745–266–103; 3745–266–104; 3745–266–108; 3745–266–109; 3745–266–110; 3745–266–111; 3745–266–112; Effective December 7, 2004. |
| Coke Ovens Administrative Stay Checklist 98 | September 5, 1991, 56 FR 43754. | OAC 3745–266–100; Effective December 7, 2004. |
| Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units Checklist 100. | January 29, 1992, 57 FR 3462. | OAC 3745–50–10; 3745–50–44; 3745–54–15; 3745–54–19; 3745–54–73; 3745–56–21; 3745–56–22; 3745–56–23; 3745–56–26; 3745–56–28; 3745–56–51; 3745–56–52; 3745–56–53; 3745–56–54; 3745–57–02; 3745–57–03; 3745–57–04; 3745–57–06; 3745–57–10; 3745–65–15; 3745–65–19; 3745–65–73; 3745–67–21; 3745–67–22; 3745–67–23; 3745–67–26; 3745–67–28; 3745–67–54; 3745–67–55; 3745–67–59; 3745–67–60; 3745–68–02; 3745–68–03; 3745–68–04; 3745–68–05; 3745–68–10; Effective December 7, 2004. |
| Coke by-product Exclusion Checklist 105 | June 22, 1992, 57 FR 27880. | OAC 3745–51–04; 3745–266–100; Effective December 7, 2004. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III Checklist 111. | August 25, 1992, 57 FR 38558. | OAC 3745–50–10; 3745–50–11; 3745–51–02; 3745–54–01; 3745–65–01; 3745–266–100; 3745–266–101; 3745–266–103; 3745–266–104; 3745–266–106; 3745–266–107; 3745–266–108; 3745–266–112; Effective December 7, 2004. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces; Amendment IV Checklist 114. | September 30, 1992, 57 FR 44999. | OAC 3745–266–103; Effective December 7, 2004. |
| Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C Checklist 121. | February 16, 1993, 58 FR 8658. | OAC 3745–50–10; 3745–50–51; 3745–54–03; 3745–55–011; 3745–57–72; 3745–57–73; 3745–65–01; 3745–270–02; Effective December 7, 2000. |
| Requirements for Preparation, Adoption and Submittal of Implementation Plans Checklist 125. | July 20, 1993, 58 FR 38816 | OAC 3745–50–11; 3745–266–104; 3745–266–106; Effective December 7, 2004. |
| Hazardous Waste Management System; Testing and Monitoring Activities Checklist 126 as amended. | August 31, 1993, 58 FR 46040. | OAC 3745–50–11; 3745–50–19; 3745–50–44; 3745–50–62; 3745–50–66; 3745–51–20; 3745–51–22; 3745–51–24; 3745–55–90; 3745–57–14; 3745–66–90; 3745–68–14; 3745–270–07; Effective December 7, 2004. |
| Checklist 126.1 | September 19, 1994, 59 FR 47980. | 3745–270–40; Effective February 8, 2005. |
| Burning of Hazardous Waste in Boilers and Industrial Furnaces, Revised Bevill Exemption Levels Checklist 127. | November 9, 1993, 58 FR 59598. | OAC 3745–266–112; Effective December 7, 2004. |
| Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules Checklist 144. | June 29, 1995, 60 FR 33912. | OAC 3745–50–10; 3745–50–40; 3745–51–31; 375–266–103; 3745–266–104; Effective December 7, 2004. |
| RCRA Expanded Public Participation Checklist 148 | December 11, 1995, 60 FR 63417. | OAC 3745–50–10; 3745–50–39; 3745–50–44; 3745–50–57; 3745–50–58; 3745–50–62; 3745–50–66; Effective December 7, 2004. |

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Description of federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Military Munitions Rule: Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties Checklist 156. | February 12, 1997, 62 FR 6622. | OAC 3745–50–10; 3745–50–45; 3745–50–51; 3745–51–02; 3745–52–10; 3745–52–20; 3745–53–10; 3745–54–01; 3745–54–70; 3745–65–01; 3745–65–70; 3745–205–200; 3745–205–201; 3745–205–202; 3745–256–200; 3745–256–201; 3745–256–202; 3745–266–200; 3745–266–201; 3745–266–202; 3745–266–203; 3745–266–204; 3745–266–205; 3745–266–206; Effective December 7, 2004. |
| Hazardous Waste Management System; Testing and Monitoring Activities Checklist 158. | June 13, 1997, 62 FR 32452. | OAC 3745–50–51; 3745–266–103; 3745–266–104; 3745–266–106; 3745–266–107; Effective December 7, 2004. |
| Kraft Mill Steam Stripper Condensate Exclusion Checklist 164. | April 15, 1998, 63 FR 18504. | OAC 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–30; 3745–51–31; 3745–51–32; 3745–266–100; Effective December 7, 2004; 3745–270–40; Effective February 8, 2005. |
| Standards Applicable to Owners/Operators of Closed and Closing Hazardous Waste Management Facilities: Post-Closure Permit Requirement and Closure Process Checklist 174. | October 22, 1998, 63 FR 56709. | OAC 3745–50–44; 3745–50–45; 3745–54–90; 3745–55–10; 3745–55–12; 3745–55–18; 3745–55–40; 3745–65–90; 3745–66–10; 3745–66–12; 3745–66–18; 3745–66–21; 3745–66–40; Effective December 7, 2004. |
| Hazardous Remediation Waste Management Requirements Checklist 175. | November 30, 1998, 63 FR 65873. | OAC 3745–50–10; 3745–50–40; 3745–50–42; 3745–50–51; Effective December 7, 2004. |
| Universal Waste Rule Technical Amendment Checklist 176. | December 24, 1998, 63 FR 71225. | OAC 3745–266–80; 3745–273–09; Effective December 7, 2004. |
| Guidelines Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the CWA and RCRA Checklist 180. | May 14, 1999, 64 FR 26315. | OAC 3745–50–11; Effective December 7, 2004. |
| Universal Waste: Lamp Rule Checklist 181 ..... | July 6, 1999, 64 FR 36465 | OAC 3745–50–10; 3745–50–45; 3745–51–09; 3745–54–01; 3745–54–100; 3745–270–01; 3745–273–01; 3745–273–02; 3745–273–03; 3745–273–04; 3745–273–05; 3745–273–06; 3745–273–08; 3745–273–09; 3745–273–10; 3745–273–13; 3745–273–14; 3745–273–30; 3745–273–32; 3745–273–33; 3745–273–34; 3745–273–50; 3745–273–60; 3745–273–81; Effective December 7, 2004. |
| NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors Checklist 182 as amended.<br>Checklist 182.1. | September 30, 1999, 64 FR 52827.<br>November 19, 1999, 64 FR 63209. | OAC 3745–50–10; 3745–50–44; 3745–50–51; 3745–50–62; 3745–50–66; 3745–51–38; 3745–57–40; 3745–57–91; 3745–68–40; 3745–266–100; 3745–266–101; 3745–266–105; 3745–266–112; Effective July 27, 2001 and December 7, 2004. |
| Wastewater Treatment Sludges from the Metal Finishing Industry; 180 Day Accumulation Time Checklist 184. | March 8, 2000, 65 FR 12377. | OAC 3745–52–34; Effective December 7, 2004. |
| NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections Checklist 188 as amended.<br>Checklist 188.2. | July 10, 2000, 65 FR 42292<br>July 3, 2001, 66 FR 35087. | OAC 3745–50–51; 3745–51–38; 3745–57–40; Effective July 27, 2001. |
| Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities Checklist 189. | November 8, 2000, 65 FR 67067. | OAC 3745–51–11; 3745–51–30; 3745–51–32; 3745–270–33; 3745–270–48; Effective December 7, 2004; 3745–270–40; Effective February 8, 2005. |
| Storage, Treatment, Transportation, and Disposal of Mixed Waste Checklist 191. | May 16, 2001, 66 FR 27217. | OAC 3745–266–210; 3745–266–220; 3745–266–235; 3745–266–240; 3745–266–250; 3745–266–255; 3745–266–260; 3745–266–305; 3745–266–310; 3745–266–315; 3745–266–345; 3745–266–350; 3745–266–355; Effective December 7, 2004. |
| Revisions to the Mixture and Derived-From Rule Checklist 192A. | May 16, 2001, 66 FR 27266. | OAC 3745–51–03; Effective December 7, 2004. |
| Land Disposal Restrictions Correction Checklist 192B .... | May 16, 2001, 66 FR 27266. | OAC 3745–270–42; Effective December 7, 2004. |
| Change of EPA Mailing Address Checklist 193 ..... | June 28, 2001, 66 FR 34734. | OAC 3745–50–11; Effective December 7, 2004. |
| Correction to the Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules Checklist 194 as amended.<br>Checklist 194.1 ..... | October 3, 2001, 66 FR 50332.<br>December 3, 2001, 66 FR 60153. | OAC 3745–51–03; Effective December 7, 2004. |

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

| Description of federal requirement (include checklist #, if relevant) | **Federal Register** date and page (and/or RCRA statutory authority) | Analogous state authority |
|---|---|---|
| Identification and Listing of Hazardous Waste: Inorganic Chemical Manufacturing Wastes Checklist 195 as amended. | November 20, 2001, 66 FR 58257. | OAC 3745–51–04; 3745–51–30; 3745–51–32; 3745–270–36; Effective December 7, 2004. |
| Checklist 195.1 | April 9, 2002, 67 FR 17119 | 3745–270–40; February 8, 2005. |
| CAMU Amendments Checklist 196 | January 22, 2002, 67 FR 2962. | OAC 3745–50–10; 3745–57–70; 3745–57–71; 3745–57–72; 3745–57–74; 3745–57–75; Effective December 7, 2004. |

TABLE 2.—EQUIVALENT STATE INITIATED CHANGES

| Ohio amendment | Description of change | Sections affected and effective date |
|---|---|---|
| Recycled Used Oil Management Standards Checklist 112, 57 FR 41566. | Adds Federal Equivalent of 40 CFR 266.100 to Ohio's authorized Used Oil Rule. | OAC 3745–266–100; Effective December 7, 2004. |
| Recovered Oil Exclusion; Petroleum Refining Industry Checklist 135, 59 FR 38536. | Adds Federal Equivalent of 40 CFR 266.100 to Ohio's authorized Used Oil Rule. | OAC 3745–51–03; 3745–51–06; 3745–266–100; Effective December 7, 2004. |
| Land Disposal Restrictions—Phase II—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristics Wastes and Newly Listed Waste Checklist 137, 59 FR 47982. | Adds Federal Equivalent of 40 CFR 266.100 to Ohio's authorized Land Disposal Restrictions—Universal Treatment Standards Rule. | OAC 3745–266–100; Effective December 7, 2004. |
| Petroleum Refining Process Wastes Checklist 169, 63 FR 42110 as amended 63 FR 54356. | Adds Federal Equivalent of 40 CFR 266.100 to Ohio's authorized Petroleum Refining Process Wastes Rule. | OAC 3745–266–100; Effective December 7, 2004. |
| SB11 | State Register, electronic rule filing, changes to JCARR jurisdiction and public notice requirements. | None. Effective September 15, 1999. |
| SB265 | Changes per SB265 (PUCO case fix); bill effective 10/17/2002. | OAC 3745–50–10; 3745–50–11; 3745–50–19; 3745–50–38; 3745–50–39; 3745–50–40; 3745–50–41; 3745–50–43; 3745–50–44; 3745–50–46; 3745–50–51; 3745–50–53; 3745–50–62; 3745–50–66; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–08; 3745–51–11; 3745–51–20; 3745–51–21; 3745–51–22; 3745–51–23; 3745–51–24; 3745–51–30; 3745–51–32; 3745–51–35; 3745–51–38; 3745–52–10; 3745–52–11; 3745–52–12; 3745–52–20; 3745–52–34; 3745–52–53; 3745–52–54; 3745–52–56; 3745–53–20; 3745–53–30; 3745–54–01; 3745–54–13; 3745–54–18; 3745–54–52; 3745–54–73; 3745–54–98; 3745–55–12; 3745–55–13; 3745–55–42; 3745–55–43; 3745–55–45; 3745–55–51; 3745–55–75; 3745–55–90; 3745–55–93; 3745–55–98; 3745–56–21; 3745–56–51; 3745–57–03; 3745–57–14; 3745–57–40; 3745–57–71; 3745–57–72; 3745–57–73; 3745–54–74; 3745–57–75; 3745–57–91; 3745–65–01; 3745–65–13; 3745–65–52; 3745–65–73; 3745–66–13; 3745–66–42; 3745–66–43; 3745–66–44; 3745–66–45; 3745–66–47; 3745–66–48; 3745–66–90; 3745–66–93; 3745–66–96; 3745–66–98; 3745–66–101; 3745–68–05; 3745–68–14; 3745–68–40; 3745–69–30; 3745–205–101; 3745–266–20; 3745–266–23; 3745–266–100; 3745–266–102; 3745–266–103; 3745–266–104; 3745–266–105; 3745–266–106; 3745–266–107; 3745–266–109; 3745–266–111; 3745–266–112; 3745–266–201; 3745–266–203; 3745–266–205; 3745–266–210; 3745–266–240; 3745–266–250; 3745–266–315; 3745–266–345; 3745–266–350; 3745–270–01; 3745–270–02; 3745–270–03; 3745–270–04; 3745–270–07; 3745–270–31; 3745–270–42; 3745–270–45; 3745–270–48; 3745–270–50; 3745–273–03; 3745–273–09; 3745–273–13; 3745–273–14; 3745–273–33; 3745–273–34; 3745–273–81; 3745–279–10; 3745–279–11; 3745–279–22; 3745–279–42; 3745–279–43; 3745–279–45; 3745–279–51; 3745–279–54; 3745–279–55; 3745–279–62; 3745–279–64; 3745–279–73; Effective December 7, 2004; 3745–270–40; Effective February 8, 2005. |
| HB432 Section 4 | HB432, Hazardous Waste permit length changed to ten years, bill effective April 15, 2005. | OAC 3745–50–54; Effective 10/14/2006. |
| CL–FLAM | References to ''Flammable and Combustable Liquids Code''. | OAC 3745–50–11; 3745–55–98; 3745–66–98; 3745–66–101; 3745–266–111; Effective December 7, 2004. |
| CL–FORM | Manifest form number corrections, and other form number corrections. | OAC 3745–52–12; 3745–52–41; 3745–53–11; 3745–54–01; 3745–279–42; 3745–279–51; 3745–279–62; 3745–279–73; Effective December 7, 2004. |
| CL–HWFB | Removal of ''HWFB'' concept, and addition of authorities to DHWM rules, per HB95 (budget bill, HB95, effective 9/26/2003). | OAC 3745–50–10; 3745–50–11; 3745–50–21; 3745–50–30; 3745–50–38; 3745–50–40; 3745–50–41; 3745–50–51; 3745–66–43; Effective December 7, 2004. |

TABLE 2.—EQUIVALENT STATE INITIATED CHANGES—Continued

| Ohio amendment | Description of change | Sections affected and effective date |
|---|---|---|
| CL–3010 | References to ''RCRA 3010'' and its prior locations (includes Region 5's comments on the YR5 (J5) set on this subject). | OAC 3745–50–40; 3745–51–01; 3745–51–04; 3745–51–06; 3745–51–07; 3745–51–08; 3745–51–20; 3745–57–83; 3745–266–21; 3745–266–22; 3745–266–23; 3745–266–70; 3745–266–80; 3745–273–60; 3745–279–42; 3745–279–51; 3745–279–62; 3745–279–73; Effective December 7, 2004. |
| CL–R5COM | Region 5's comments on the YR5 (J5) rules (not including the ''RCRA 3010'' comments). | OAC 3745–50–10; Effective 12/07/04. |
| CL–MEGA | Cross-reference of subparts errors, inconsistencies, typos, etc. grouped with Set G (MegaSet). | OAC 3745–50–01; 3745–50–10; 3745–50–40; 3745–50–41; 3745–50–42; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–46; 3745–50–48; 3745–50–51; 3745–50–53; 3745–50–57; 3745–50–58; 3745–50–62; 3745–51–01; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–07; 3745–51–08; 3745–51–09; 3745–51–11; 3745–51–20; 3745–51–21; 3745–51–22; 3745–51–23; 3745–51–24; 3745–51–30; 3745–51–31; 3745–51–33; 3745–51–35; 3745–51–38; 3745–52–10; 3745–52–11; 3745–52–12; 3745–52–34; 3745–52–41; 3745–52–50; 3745–52–51; 3745–52–52; 3745–52–53; 3745–52–54; 3745–52–55; 3745–52–56; 3745–52–60; 3745–52–70; 3745–53–10; 3745–53–11; 3745–53–12; 3745–53–20; 3745–53–30; 3745–54–01; 3745–54–03; 3745–54–10; 3745–54–11; 3745–54–12; 3745–54–14; 3745–54–15; 3745–54–16; 3745–54–17; 3745–54–18; 3745–54–30; 3745–54–50; 3745–54–52; 3745–54–70; 3745–54–71; 3745–54–73; 3745–54–74; 3745–54–76; 3745–54–90; 3745–54–94; 3745–54–98; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–13; 3745–55–16; 3745–55–17; 3745–55–18; 3745–55–19; 3745–55–40; 3745–55–43; 3745–55–45; 3745–55–51; 3745–55–71; 3745–55–75; 3745–55–78; 3745–55–90; 3745–55–93; 3745–55–97; 3745–55–98; 3745–56–20; 3745–56–21; 3745–56–26; 3745–56–28; 3745–56–31; 3745–56–50; 3745–56–51; 3745–56–54; 3745–56–59; 3745–56–78; 3745–56–83; 3745–57–02; 3745–57–03; 3745–57–05; 3745–57–10; 3745–57–14; 3745–57–17; 3745–57–40; 3745–57–41; 3745–57–42; 3745–57–44; 3745–57–73; 3745–57–83; 3745–57–91; 3745–65–01; 3745–65–10; 3745–65–11; 3745–65–12; 3745–65–13; 3745–65–14; 3745–65–15; 3745–65–16; 3745–65–17; 3745–65–30; 3745–65–37; 3745–65–50; 3745–65–52; 3745–65–70; 3745–65–71; 3745–65–73; 3745–65–74; 3745–65–76; 3745–65–90; 3745–65–92; 3745–66–10; 3745–66–11; 3745–66–13; 3745–66–14; 3745–66–16; 3745–66–17; 3745–66–18; 3745–66–19; 3745–66–40; 3745–66–43; 3745–66–44; 3745–66–45; 3745–66–47; 3745–66–48; 3745–66–70; 3745–66–71; 3745–66–90; 3745–66–93; 3745–66–96; 3745–66–97; 3745–66–98; 3745–67–20; 3745–67–21; 3745–67–22; 3745–67–23; 3745–67–26; 3745–67–28; 3745–67–50; 3745–67–54; 3745–67–70; 3745–67–79; 3745–67–80; 3745–68–01; 3745–68–02; 3745–68–14; 3745–68–40; 3745–68–81; 3745–69–01, 3745–69–30, 3745–266–80; 3745–270–01; 3745–270–02; 3745–270–03; 3745–270–04; 3745–270–07; 3745–270–09; 3745–270–31; 3745–270–42; 3745–270–45; 3745–270–48; 3745–270–50; 3745–273–01; 3745–273–02; 3745–273–03; 3745–273–04; 3745–273–05; 3745–273–10; 3745–273–13; 3745–273–14; 3745–273–17; 3745–273–20; 3745–273–30; 3745–273–32; 3745–273–33; 3745–273–34; 3745–273–37; 3745–273–40; 3745–273–50; 3745–273–54; 3745–273–56; 3745–273–60; 3745–273–70; 3745–273–81; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–22; 3745–279–24; 3745–279–42; 3745–279–43; 3745–279–45; 3745–279–46; 3745–279–51; 3745–279–54; 3745–279–55; 3745–279–56; 3745–279–57; 3745–279–58; 3745–279–61; 3745–279–62; 3745–279–64; 3745–279–65; 3745–279–71; 3745–279–73; 3745–279–74; 3745–279–81; Effective December 7, 2004; 3745–270–40; Effective February 8, 2005. |
| CL–DIGIT | 3-digit rule number reference corrections. | Rescinded rules: OAC 3745–49–031; 3745–50–221; 3745–50–222; 3745–50–311; 3745–50–312; 3745–50–313; 3745–50–314; 3745–50–315; 3745–50–316; 3745–55–01; 3745–55–011; 3745–56–33; 3745–56–60; 3745–57–72; 3745–58–30; 3745–58–31; 3745–58–32; 3745–58–33; 3745–58–60; 3745–58–70; 3745–66–991; 3745–66–992; 3745–68–011; 3745–218–01; 3745–218–011; 3745–218–02; 3745–248–01; 3745–248–011; 3745–248–02 Rescissions; Effective December 7, 2004.<br>New and amended rules: 3745–50–10; 3745–50–19; 3745–50–20; 3745–50–23; 3745–50–24; 3745–50–25; 3745–50–26; 3745–50–27; 3745–50–28; 3745–50–29; 3745–50–30; 3745–50–40; 3745–50–44; 3745–50–45; 3745–50–46; 3745–50–48; 3745–50–51; 3745–50–57; 3745–51–01; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–07; 3745–51–08; 3745–51–09; 3745–51–20; 3745–51–32; 3745–51–38; 3745–52–10; 3745–52–11; 3745–52–34; 3745–52–41; 3745–52–70; 3745–53–12; 3745–54–01; 3745–54–03; 3745–54–12; 3745–54–13; 3745–54–14; 3745–54–16; 3745–54–17; 3745–54–18; 3745–54–52; 3745–54–73; 3745–54–74; 3745–54–76; 3745–54–90; 3745–54–91; 3745–54–98; 3745–54–99; 3745–54–100; 3745–54–101; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–13; 3745–55–17; 3745–55–18; 3745–55–40; 3745–55–42; 3745–55–43; 3745–55–45; 3745–55–51; 3745–55–71; 3745–55–75; 3745–55–93; 3745–56–31; 3745–56–50; 3745–56–59; 3745–56–80; 3745–57–03; 3745–57–10; 3745–57–17; 3745–57–71; 3745–57–73; 3745–57–83; 3745–57–92; 3745–65–01; 3745–65–12; 3745–65–13; 3745–65–14; 3745–65–16; 3745–65–17; 3745–65–52; 3745–65–56; 3745–65–73; 3745–65–74; 3745–66–10; 3745–66–11; 3745–66–12; 3745–66–13; 3745–66–19; 3745–66–40; 3745–66–42; 3745–66–43; 3745–66–45; 3745–66–71; 3745–66–90; 3745–66–93; 3745–66–100; 3745–66–101; 3745–68–05; 3745–68–81; 3745–69–01; 3745–205–100; 3745–205–101; 3745–205–102; 3745–256–100; 3745–256–101; 3745–256–102; 3745–266–20; 3745–266–21; 3745–266–22; 3745–266–23; 3745–266–70; 3745–266–80; 3745–270–04; 3745–270–07; 3745–270–31; 3745–270–50; 3745–273–01; 3745–273–02; 3745–273–03; 3745–273–13; 3745–273–17; 3745–273–33; 3745–273–37; 3745–273–54; 3745–273–60; 3745–279–10; 3745–279–12; 3745–279–22; 3745–279–45; 3745–279–54; 3745–279–64; 3745–279–81; Effective December 7, 2004. |

**G. Where Are the Revised State Rules Different From the Federal Rules?**

Ohio has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements. In this action, Ohio has chosen to remain more stringent in two rules. The first is the Hazardous Remediation Waste Management Requirements, (Checklist 175 above) by choosing not to adopt 40 CFR Sections 270.79 through 270.230 which allow for Remedial Action Plans (RAP). The RAP is considered to be less stringent. The second is the Liners and Leak Detection Systems for Hazardous Waste Disposal Units (Checklist 100 above). In this rule, Ohio is not adopting 40 CFR 270.4 which is the permit shield provision. Under Table 2 (Equivalent State Initiated Changes), sections 3745–50–33, 3745–50–34, 3745–50–35, and 3745–50–36 under HWFB, have also been amended. They are broader in scope fee rules, not authorizable in this action. This action involves no other more stringent or broader in scope State requirements.

**H. Who Handles Permits After the Authorization Takes Effect?**

Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Ohio is not yet authorized.

**I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Ohio?**

Ohio is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Ohio;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country.

Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Ohio.

**J. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Ohio's rules, up to and including those revised June 7, 1991, as corrected August 19, 1991, have previously been codified through the incorporation-by-reference effective February 4, 1992 (57 FR 4162) . We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

**K. Statutory and Executive Order Reviews**

This proposed rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

*1. Executive Order 18266: Regulatory Planning Review*

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

*2. Paperwork Reduction Act*

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

*3. Regulatory Flexibility Act*

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*4. Unfunded Mandates Reform Act*

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

*5. Executive Order 13132: Federalism*

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (i.e., substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).

*6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (i.e., substantial direct effects on one or more Indian tribes, or on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.)

*7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant as defined in Executive Order 12866 and because the EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

*8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

*9. National Technology Transfer Advancement Act*

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

*10. Executive Order 12988*

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

*11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings*

EPA has complied with Executive Order 12630 (53 FR 8859, March 18, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

*12. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations*

Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994).

*13. Congressional Review Act*

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: May 24, 2007.

**Walter Kovalick,**

*Acting Regional Administrator, Region 5.*

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 98–120; FCC 07–71]**

## Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on the obligations of cable operators under Sections 614 (establishing mandatory carriage rights for local commercial television stations) and 615 (establishing mandatory carriage rights for noncommercial educational television stations) of the Communications Act of 1934 concerning the carriage of digital broadcast television signals after the conclusion of the digital television (''DTV'') transition. The Commission reiterates that broadcast signal delivered in high-definition to a cable system must be carried by that system in HDTV and requests comment on exactly what constitutes material degradation. The Commission proposes to provide more detail on the material degradation requirements adopted by the Commission in 2001 and requests comment on two alternatives. The Commission also offers for comment two proposals for ensuring that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition.

**DATES:** Comments for this proceeding are due on or before July 16, 2007; reply comments are due on or before August 16, 2007.

**ADDRESSES:** You may submit comments, identified by CS Docket No. 98–120, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Federal Communications Commission's Web Site: *http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Eloise Gore, *Eloise.Gore@fcc.gov* of the Media Bureau, Policy Division, (202) 418–2120.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (Second FNPRM), FCC 07–71, adopted on April 25, 2007, and released on May 4, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

**Initial Paperwork Reduction Act of 1995 Analysis**

The NPRM seeks comment on potential information collection requirements. The Commission will invite the general public to comment at a later date on any rules developed as a result of this proceeding that require the collection of information, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will publish a separate notice seeking these comments from the public. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we will seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

**Summary of the NPRM of Proposed Rulemaking**

**I. Introduction**

1. In this *Second Further Notice of Proposed Rulemaking (''Second FNPRM'')*, we address issues concerning the carriage of digital broadcast television signals after the conclusion of the digital television (''DTV'') transition.

Section 614(b)(4)(B) of the Communications Act of 1934, as amended (the ''Act''), directs the Commission to revise the mandatory signal carriage rules to reflect changes necessitated by the transition from analog to digital broadcasting. We believe that this *Second FNPRM* is warranted at this time in light of the recently established deadline for the end of analog broadcasts by full-power television licensees. Further, addressing these issues now will provide digital broadcasters and cable operators with adequate time to prepare to comply with any rules that we adopt.

2. In this *Second FNPRM*, we seek comment on the post-transition obligations of cable operators under Sections 614 (establishing mandatory carriage rights for local commercial television stations) and 615 (establishing mandatory carriage rights for noncommercial educational television stations) of the Communications Act of 1934, as amended (the ''Act'').

3. First, we remind industry of our 2001 decision regarding material degradation (67 FR 17015–01): A broadcast signal delivered in HDTV [high-definition television] to a cable system must be carried by that system in HDTV. In addition, we seek comment on exactly what constitutes material degradation.

4. Furthermore, we address the statutory requirement that cable operators must make the signal transmitted by a broadcaster electing mandatory carriage viewable by all of their subscribers, and seek comment on how cable operators can implement this requirement after the end of analog broadcasting on February 17, 2009. Specifically, we propose that cable operators must comply with this ''viewability'' provision and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) Carrying the digital signal in analog format, or (2) carrying the signal only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. In the absence of such a requirement, analog cable subscribers (currently about 50% of all cable subscribers, or approximately 32 million households; Kagan reports that as of June 2006, there were 65.3 million cable subscribers) would no longer be able to view commercial must-carry stations or non-commercial stations after February 17, 2009. We believe such an outcome would adversely impact the DTV transition and would unduly burden millions of consumers.

5. In interpreting both of these statutory provisions, we are mindful of the need to minimize the burden imposed upon consumers by the end of analog broadcasting in order to facilitate the successful and timely conclusion of the DTV transition. The prohibition against material degradation ensures that cable subscribers who invest in a HDTV are not denied the ability to view broadcast signals transmitted in this improved format. The requirement that cable operators make must-carry stations viewable by all cable subscribers ensures that analog cable subscribers, who today are able to view all of their broadcast stations, do not lose access to those stations as a result of the switch to digital-only broadcasting.

## II. Background

6. Pursuant to Section 614(b)(4)(B) of the Act, the Commission initiated this proceeding in 1998 to address the responsibilities of cable television operators with respect to carriage of digital broadcasters in light of the significant changes to the broadcasting and cable television industries resulting from the conversion to digital operations; 63 FR 42330–01.

7. In the 2001 *First Report and Order*, the Commission concluded that broadcasters operating digital-only television stations are entitled to mandatory carriage under the Act. In an effort to support the ultimate conversion of digital broadcast signals and facilitate the return of the analog spectrum, the Commission also decided to permit a digital-only station, on an interim basis, to ''demand that one of its HDTV [high-definition television] or SDTV [standard-definition television] signals be carried on the cable system for delivery to subscribers in an analog format.''

8. Now that Congress has established February 17, 2009 as the date certain for the end of analog broadcasts by full-power television licensees, we believe that the time has come for us to address the post-transition carriage responsibilities of cable operators under Sections 614 and 615—particularly in light of the fact that there will continue to be a large number of cable subscribers with legacy, analog-only television sets after the end of the DTV transition. This will be the case despite the steady rise in DTV display sales over the last several years.

## III. Discussion

9. As discussed below, the Communications Act requires that cable systems provide mandatory-carriage signals without material degradation and ensure that all subscribers can receive and view those signals. This *Second FNPRM* proposes to provide more detail on the material degradation requirements adopted by the Commission in 2001 and offers for comment two proposals for ensuring that cable subscribers with analog television sets can continue to view all must-carry stations after the end of the DTV transition. It also seeks comment on other issues that would be directly implicated by the proposals.

### *A. Material Degradation—Sections 614(b)(4)(A) and 615(g)(2)*

10. The Communications Act requires (1) cable operators to carry local broadcast signals ''without material degradation,'' and (2) the Commission to ''adopt carriage standards to ensure that, to the extent technically feasible, the quality of signal processing and carriage provided by a cable system for the carriage of local commercial television stations will be no less than that provided by the system for carriage of any other type of signal.'' As noted above, Section 614(b)(4)(B) of the Act directs the Commission ''to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of such broadcast signals of local commercial television stations which have been changed'' as a result of the transition from analog to digital broadcasting.

11. In the *1998 NPRM*, we solicited comments to determine the extent to which this provision precludes cable operators from altering a digital broadcast station signal when the transmission is processed at the system headend or in customer premises equipment. Some broadcasters argued that a digital signal would be materially degraded if it were not transmitted to the viewer in the format that the broadcaster intended. Other broadcasters sought to preclude cable operators from blocking or deleting any of the bits constituting the broadcast material. The *First Report and Order* concluded that cable operators are required to ensure that consumers with DTV equipment (*e.g.*, Digital-Cable-Ready sets or DTV-ready sets connected to an HDTV digital cable set-top box) are able to view the digital signal in its original format—*e.g.*, in high definition (''HD'') if delivered by the broadcaster in HD.

12. As noted above, we previously determined in the *First Report and Order* that a broadcast signal delivered to the cable headend in HD must be carried in HD in order to comply with the prohibition on material degradation.

We continue to require such carriage and reiterate that requirement. We now propose revisions to the material degradation requirements set forth in the *First Report and Order* with respect to carriage of bits in the broadcast signal. Specifically, we propose to move from a subjective to objective measure. For instance, we seek comment on whether we should require that all primary video and program-related content bits transmitted by the broadcaster (the ''content bits'') be carried to avoid material degradation. Alternatively, we seek comment on whether the Commission's existing non-discrimination requirement is a better objective test for material degradation. In the *First Report and Order*, the Commission prohibited cable operators from treating cable programming services more favorably than broadcast signals for purposes of material degradation. We seek comment on the application of the existing or a new non-discrimination rule in this context. We also seek comment on how to verify that cable operators are abiding by this requirement. Should we identify specific measurement tools? If so, what should those measurement tools be? We also request comment and specific estimates regarding the costs of compliance with this proposal, particularly with respect to small cable operators, and whether there are alternative means that would minimize the economic impact for small cable operators while still complying with the statutory requirements. As noted in the *First Report and Order*, it may be especially burdensome for small systems with limited channel capacity (such as systems with fewer than 330 MHz) to carry an HDTV signal if they are not otherwise providing HDTV programming. Therefore, if a small system that is not otherwise carrying any HDTV signals is required to carry a broadcast signal in HDTV, such that the signal straddles two 6 MHz channels (*i.e.*, if they are passing through the broadcaster's 8–VSB modulated signal), the system may include all of the lost spectrum when calculating its one-third capacity for purposes of the statutory cap.

13. Our option of carrying all content bits is responsive to the Petitions for Reconsideration filed in this docket in which broadcasters requested that we require cable operators to carry ''the entire qualified digital bit stream of each station in the format in which the broadcaster originally transmitted it.'' It also is consistent with the requests for clarification made by the Broadcast Group and the Noncommercial Broadcasters that the material degradation requirements ''ensure that cable subscribers do not receive DTV service, including HDTV, that is inferior in quality to the service available over the air.'' In addition, by seeking comment on measurement tools, this option is responsive to broadcast commenters' concern that the material degradation standard adopted in the *First Report and Order* did not provide an objective way to evaluate material degradation.

14. We request comment on this option. We specifically request comment on how cable operators are to distinguish between bits with content and so-called ''null bits'' (so-called ''null bits'' need not be passed through or included in the signal as carried, as they are, as the name implies, empty of any content), and whether material degradation could result from failure to carry these empty bits. We also recognize that bandwidth-conserving techniques commonly are used by cable operators to improve efficiency. Is there a way to permit the use of improved compression, statistical multiplexing, rate shaping (Rate shaping ''describes bit rate adaptation techniques applied to MPEG–2 encoded streams, to further enhance bandwidth efficiency. This technique can substitute for decoding-encoding operations that are expensive, space consuming and ultimately harmful to content quality''), or other techniques that would not result in prohibited material degradation?

15. We further seek comment on whether, under the option of carrying all content bits, a cable operator that wishes to reduce the number of content bits in a digital broadcast signal first must demonstrate to the broadcaster that such reduction will not result in material degradation. In doing so, how might the cable operator demonstrate that, although not all of the content bits are being carried, the content will not be degraded in a material way? Would it be necessary and/or sufficient for the cable operator to demonstrate that the broadcast station's digital signal carriage does not differ from other broadcast or non-broadcast programmers? (We note that this latter comparison also would ensure that cable operators do not discriminate against some or all broadcast content as compared with non-broadcast content.) We seek comment on whether, under these circumstances, the cable operator must continue to pass through all of the content bits until an agreement has been reached with the broadcast station to permit the reduction in the number of bits. Similarly, we seek comment on a rule that when a broadcast station files a carriage complaint concerning material degradation, the cable operator must pass through all of the content bits during the pendency of the complaint. The Commission is required to resolve carriage complaints within 120 days after the filing of a complaint. In situations where negotiations between cable operators and broadcasters reach an impasse, cable operators may notify the station in writing of that fact and the station will then have 30 days from receipt of the letter to file a complaint with the Commission in order to preserve its claim. We seek comment on these options and on the procedures and mechanisms for cable operators and stations to engage in such discussions short of filing a carriage complaint with the Commission.

*B. Availability of Signals—Sections 614(b)(7) and 615(h)*

16. Pursuant to Sections 614 and 615 of the Act, cable operators must ensure that all cable subscribers have the ability to view all local broadcast stations carried pursuant to mandatory carriage. Specifically, Section 614(b)(7) (for commercial stations) states that broadcast signals that are subject to mandatory carriage must be ''viewable via cable on all television receivers of a subscriber which are connected to a cable system by a cable operator or for which a cable operator provides a connection.'' Similarly, Section 615(h) for noncommercial stations states that ''Signals carried in fulfillment of the carriage obligations of a cable operator under this section shall be available to every subscriber as part of the cable system's lowest priced tier that includes the retransmission of local commercial television broadcast signals.'' These statutory requirements plainly apply to cable carriage of digital broadcast signals, and, as a consequence, cable operators must ensure that all cable subscribers—including those with analog television sets—continue to be able to view all commercial and non-commercial must-carry broadcast stations after February 17, 2009. Analog-only television sets plainly qualify as ''television receivers'' under Section 614(b)(7) at the present time, and we think that it is eminently reasonable to conclude that they will continue to fall within the scope of that term as it is used in Section 614(b)(7) after the transition. Below we seek comment on how to implement this statutory requirement. We note that all cable subscribers today are able to view all of their must-carry stations, and we believe that it is critical to the successful and timely conclusion of the DTV transition that they are not disenfranchised by the

switch to digital-only broadcasting. We therefore are mindful of the need to minimize the burden imposed on consumers, including cable subscribers with analog television sets, by the end of the DTV transition.

17. To achieve compliance with the viewability requirement of Sections 614(b)(7) and 615(h) after the end of the DTV transition, we propose that, in order to ensure that subscribers with analog television sets remain able to view all local broadcast television stations electing mandatory carriage, cable operators must either: (1) Carry the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. In the 2001 *First Report and Order,* the Commission afforded a digital-only station mandatory carriage rights pursuant to Sections 614 and 615, coupled with the option to request that its digital signal be carried on the cable system for delivery to subscribers in an analog format, at the station's expense (a mechanism also referred to as ''down-conversion.''). This requirement would be in addition to the requirement that the cable operator pass through the HD signal to cable subscribers of an HD package, as discussed above. We believe that these proposals are consistent with our articulation of carriage requirements in the analog must-carry context, in which the Commission has made clear that mere transmission of the must-carry signal is not sufficient to meet the requirements of Section 614(b)(7). The Commission stated in 1993 that:

> We believe that the 1992 Act is clear in its requirement that all local commercial television stations carried in fulfillment of the must-carry requirements must be provided to every cable subscriber and must be viewable on all television sets that are connected to the cable system by a cable operator for which the cable operator provides a connection. The Act does not give the Commission authority to exempt any class of subscribers from this requirement. In other words, the signal must be ''viewable'' on all television sets connected to the cable provider's system. We seek comment on these proposals.

18. As we consider these issues, we are cognizant that the ultimate goal of Congress is that every customer should enjoy the benefits of the digital transition. That is, our policies should advance the goal of transitioning all consumers—including cable consumers—to digital. We seek comment on ways to promote this goal within the context of this proceeding. In particular, we seek comment on ways to move cable subscribers from analog to digital in a manner consistent with the statute and consumer expectations.

19. Under the Commission's interim down-conversion policy for digital-only stations during the transition, broadcasters that request carriage of an analog version of their digital signal must pay for the cost of down-conversion. Under the first option set forth in our proposal, however, cable operators themselves would elect to satisfy their obligations under Sections 614 and 615 by carrying a digital signal in analog format to ensure that the signal is viewable by all subscribers. Given the circumstances, should cable operators be responsible for any expense associated with down-conversion?

20. Finally, we note that, in the *First Report and Order,* the Commission concluded ''not to require a cable operator to provide subscribers with a set top box capable of processing digital signals for display on analog sets.'' That decision, however, was premised on factual considerations that will not apply in a post-transition environment. Specifically, the Commission was reluctant to require cable subscribers to obtain such equipment because the content available on the digital signal likely would have been identical to analog programming to which subscribers already had access. In that same vein, the Commission pointed out that the obligation to simulcast—which later was eliminated—weighed against requiring the provision of equipment necessary to view a digital signal. However, given that our proposal here would apply to the carriage of digital signals after the end of analog broadcasting, we believe that the Commission's 2001 decision is not directly relevant since subscribers with analog sets after the transition will face the prospect of not being able to view the signals of must-carry stations unless they possess the necessary equipment (*i.e.*, a Digital-Cable-Ready television set or a digital cable set-top box). Nevertheless, we seek comment on this issue.

## IV. Procedural Matters

### *A. Filing Requirements*

21. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the Commission's rules. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

22. *Comments and Reply Comments.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'') or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

23. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message: ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

24. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must

be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

25. *Availability of Documents.* Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–7365 (TTY), or *bill.cline@fcc.gov*. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com*; or via their Web site at *http://www.bcpiweb.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

*B. Initial Regulatory Flexibility Analysis*

26. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking (''Second FNPRM'')*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM* as indicated on the first page of the Order. The Commission will send a copy of the *Second FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposals*

27. This *Second FNPRM* seeks comment on several issues relating to the carriage of digital television broadcast stations after the analog to digital transition. Our goal in this proceeding is to determine how to implement the statutory requirements under Sections 614 (local commercial television station mandatory carriage) and 615 (noncommercial educational television station mandatory carriage) of the Communications Act of 1934, as amended (the ''Act''), when digital broadcasters seek mandatory carriage for their digital signal after February 17, 2009, the date established by Congress as to when analog service must cease. We remind industry of our 2001 decision regarding material degradation (*i.e.*, that a broadcast signal delivered in HDTV to a cable system must be carried by that system in HDTV). In addition, we seek comment on the proposal that cable operators be required to carry all of the primary video and program-related content bits transmitted by the broadcaster and on the alternative proposal to rely on the existing non-discrimination requirement or a new non-discrimination rule to provide a better objective test for material degradation. We also seek comment on procedures by which cable operators could demonstrate that, although they were not carrying every content bit (*e.g.*, through the use of improved compression or other efficiency maximizing techniques), they nevertheless were providing must-carry digital signals without material degradation. The *Second FNPRM* proposes that cable operators can comply with the ''viewability'' provisions of Sections 614 and 615 (as discussed in the *Second FNPRM*) and ensure that cable subscribers with analog television sets are able to continue to view all must-carry stations after the end of the DTV transition by either: (1) Carrying the digital signal in analog format to ensure that the signal is viewable by all subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content.

*B. Legal Basis*

28. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 534, and 535.

*C. Description and Estimate of the Number of Small Entities To Which the Proposals Will Apply*

29. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA''). The rules we may adopt as a result of the comments filed in response to this *Second Further Notice of Proposed Rulemaking* will primarily affect cable operators and television stations. A description of these small entities, as well as an estimate of the number of such small entities, is provided below.

30. *Cable and Other Program Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged as third-party distribution systems for broadcast programming. The establishments of this industry deliver visual, aural, or textual programming received from cable networks, local television stations, or radio networks to consumers via cable or direct-to-home satellite systems on a subscription or fee basis. These establishments do not generally originate programming material.'' The SBA has developed a small business size standard for Cable and Other Program Distribution, which is: all such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2002, there were a total of 1,191 firms in this category that operated for the entire year. Of this total, 1,087 firms had annual receipts of under $10 million, and 43 firms had receipts of $10 million or more but less than $25 million. Thus, under this size standard, the majority of firms can be considered small. We note, however, that the proposals at issue in this Second FNPRM only apply at this time to cable operators, and not other MVPD providers.

31. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation.

Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small.

32. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

33. *Television Broadcasting.* The proposed rules and policies apply to digital television broadcast licensees, and potential licensees of digital television service. The SBA defines a television broadcast station as a small business if such station has no more than $13 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database (BIA) on October 18, 2005, about 873 of the 1,307 commercial television stations (or about 67 percent) have revenues of $12 million or less and thus qualify as small entities under the SBA definition. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

34. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

35. *Other Program Distribution.* The SBA-recognized definition of Cable and Other Program Distribution includes other MVPDs, such as HSD, MDS/MMDS, ITFS, LMDS and OVS. This definition provides that a small entity is one with $13.5 million or less in annual receipts. As previously noted, according to the Census Bureau data for 2002, there were a total of 1,191 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,087 firms had annual receipts of under $10 million and an additional 43 firms had receipts of $10 million or more, but less than $25 million. The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

36. While SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

37. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

38. The *Second Further Notice of Proposed Rulemaking* seeks comment on statutory interpretations and proposals to address post-transition obligations of cable operators with respect to carriage of digital broadcast signals pursuant to the must carry requirements in the Communications Act. Small cable operators currently have obligations with respect to carriage of local commercial and non-commercial broadcast stations which vary according to the size of the cable system. As with existing statutory and regulatory requirements, small cable operators will need engineering and legal services to comply with the proposed rules. The *Second FNPRM* reiterates the Commission's 2001 decision regarding material degradation and requests comment on requiring cable operators be required to carry all of the primary video and program-related content bits transmitted by the broadcaster and on an alternative proposal to rely on the existing non-discrimination requirement or a new non-discrimination rule to provide a better objective test for material degradation. The 2001 *First Report and Order* recognized that the material degradation requirements could impact small cable operators disproportionately and made special provision for such situations. This recognition is retained in the proposals set forth in the *Second FNPRM.* The *Second FNPRM* also notes that cable operators must make the primary video and any program-related material transmitted by a digital broadcaster electing mandatory carriage viewable by all of their subscribers and proposes to permit cable operators to

comply with the ''viewability'' provisions by either: (1) Carrying the signals of commercial and non-commercial must-carry stations in analog format to all analog cable subscribers, or (2) for all-digital systems, carry those signals only in digital format, provided that all subscribers with analog television sets have the necessary equipment to view the broadcast content. Small cable operators will need engineering and legal analysis to comply with this proposal. The *Second FNPRM* seeks comment on the cost of compliance to small cable operators and solicits alternative approaches that would reduce the burden on small cable operators while still complying with statutory requirements. Small broadcast stations will also be affected by the proposed rules and other issues raised in the *Second FNPRM,* but we do not have any reason to expect that the compliance burden will be any greater than under the existing rules, except that initially, broadcasters may need additional legal services.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

39. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. We seek comment on the applicability of any of these alternatives to affected small entities.

40. The requirements proposed in the *Second FNPRM* are the result of statutory requirements that do not expressly provide exceptions for small entities. Broadcast stations, including small entity stations, are afforded the flexibility to elect mandatory carriage of their digital signal or elect to negotiate carriage with cable systems. The proposals do not contemplate imposing any significant burdens on small television stations, but station licensees and other parties are encouraged to submit comment on the proposals' impact on small television stations. Every effort will be made to minimize the impact of any adopted proposals on cable operators. In this IRFA, we seek comment on whether there is a specific legal basis for affording operators that qualify as small systems special consideration in this regard. We anticipate that more and more cable systems will become all-digital cable systems, thereby minimizing any potential impact that our proposals, if adopted, might have. Finally, we are mindful of the potential concerns of small entities and will, therefore, continue to carefully scrutinize our policy determinations going forward. We invite small entities to submit comment on how the Commission could further minimize potential burdens on small entities if the proposals provided in the *Second FNPRM,* or those submitted into the record, are ultimately adopted.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

41. None.

**V. Ordering Clauses**

42. *It is ordered* that, pursuant to authority contained in Sections 4, 303, 614, and 615 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, 534, and 535, this *Second Further Notice of Proposed Rulemaking* is hereby adopted.

43. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second Further Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–10962 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bliss Rapids Snail (Taylorconcha serpenticola) From the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Bliss Rapids snail (*Taylorconcha serpenticola*) from the Federal List of Endangered and Threatened Wildlife (List) pursuant to the Endangered Species Act (Act). We find that the petition presents substantial scientific information that delisting the Bliss Rapids snail may be warranted, and are initiating a status review. We plan to conduct this review concurrent with the ongoing status review initiated on July 27, 2004, which we are required to make every 5 years under section 4(c)(2)(A) of the Act. We are requesting submission of any new information on the Bliss Rapids snail since its original listing as a threatened species in 1992. At the conclusion of our status review, we will make the requisite recommendation under section 4(c)(2)(B) of the Act and issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding on this petition or the 5-year review, comments and information must be submitted to us by September 4, 2007.

**ADDRESSES:** You may submit new information, materials, comments, or questions concerning this species by any one of the following methods:

1. You may submit comments and information to the Field Supervisor, *Attention:* Bliss Rapids Snail Comments, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709.

2. You may hand-deliver written comments and information to the above address.

3. You may fax your comments to 208–378–5262.

4. You may go to the Federal rulemaking internet portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

5. You may e-mail your comments to *fw1srbocomment@fws.gov.*

Please include ''Bliss Rapids Snail Comments'' in the subject line for faxes and e-mails. Please submit electronic comments in unformatted text, and avoid the use of special characters and encryption.

**FOR FURTHER INFORMATION CONTACT:** Susan Burch, Fish and Wildlife Biologist, Snake River Fish and Wildlife Office (see **ADDRESSES**); telephone: 208–378–5243; or e-mail: *susan_burch@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

**Public Information Solicited**

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on the Bliss Rapids snail from the public, State and Federal agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*).

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES**) by the date listing in the **DATES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

**Background**

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The finding is based on information contained in the petition and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make the finding within 90 days of receiving the petition, and publish our notice of the finding in the **Federal Register**.

This finding summarizes the information included in the petition and information available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review of a 90-day finding is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

**Species Information**

The Bliss Rapids snail (*Taylorconcha serpenticola*) is found primarily on rocky surfaces in riverine and coldwater spring habitats along a 65-mile (mi) (105 kilometer (km)) stretch of the Snake River in the Hagerman area of southern Idaho (Richards *et al.* 2006, pp. 34–35). They can be locally abundant in springs and spring habitats (Richards *et al.* 2006, pp. 37, 99), but when they occur in non spring influenced riverine habitats, it is in low densities (Richards *et al.* 2006, p 37). They are not known to occur in reservoirs or on organic, fine sediments (Richards *et al.* 2006, pp. 21, 23–24). The Bliss Rapids snail appears to be a univoltine, meaning it has a 1-year life cycle and the adult population is replaced yearly (Hershler *et al.* 1994, pp. 239–240); however, they may have more than one reproductive event within a year (Richards 2004, p. 119).

We listed the Bliss Rapids snail as threatened on December 14, 1992 (57 FR 59244). At that time, we determined that the Bliss rapids snail was threatened by construction of new hydropower dams, the operation of existing hydropower dams, degraded water quality, water diversions, the introduced New Zealand mudsnail (*Potamopyrgus antipodarum*), and the lack of existing regulatory protections (57 FR 59244). The Bliss Rapids snail was described as existing in discontinuously distributed populations along 204 river miles (328 river km) in the middle Snake River, being primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousands Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs). We finalized the Snake River Aquatic Species Recovery Plan, which included the Bliss Rapids snail, in 1995 (Service 1995). Critical habitat has not been designated for this species.

**Review of Petition**

On December 26, 2006, we received a petition from the Governor of Idaho and the Idaho Power Company (IPC) requesting that the Bliss Rapids snail be removed from the List. The delisting petition cites a recent status review conducted by Richards *et al.* (2006), a review of Bliss Rapids snail sampling methodology prepared by Steward & Associates (2006), and information and data submitted to the Service at an August 24, 2006, informational meeting as support for their petition (Idaho 2006 in litt.). The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). The petition cited information on the natural history of the Bliss Rapids snail, its population status, and advances in our understanding of the species' ecology and threats since listing. The petition states that many of the threats identified in the 1992 listing rule are no longer viable or have been attenuated by subsequent actions. It also states that the Bliss Rapids snail is more abundant, is more continuously distributed, and exists in more diverse habitats than previously recorded.

**Threats Analysis**

The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification

of the species as endangered or threatened were in error.

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information presented in the December 2006 petition, when considered along with information in our files, constitutes substantial scientific or commercial information such that delisting may be warranted. Our evaluation of this information is presented below.

*A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Habitat Use

Petitioners claim that Bliss Rapids snails are able to live in a variety of habitats previously thought to be unsuitable for the species, including reservoirs, based primarily on a status report by Richards *et al.* (2006). Richards *et al.* (2006, p. 3) reviewed the available information on Bliss Rapids snail collections and reported that the species has been found in areas of the Snake River that do not have known spring influence. However, the likelihood of Bliss Rapids snail occurrence decreased with increasing temperature in riverine habitats (Richards *et al.* 2006, p. 42), and the highest mean density for the spring-influenced habitat in the Snake River was 307.2 snails per meter-squared ($m^2$), compared to the highest mean density in non spring influenced habitat of 11.7 snails per $m^2$ (Richards *et al.* 2006, p. 37). Richards *et al.* (2006, p. 54) also reported that more Bliss Rapids snails were found in shallow depths than in deeper ones. Of 607 samples taken in the 3 reservoirs within the range of the Bliss Rapids snail, none contained Bliss Rapids snails (Richards *et al.* 2006, pp. 38–39), and, therefore, the Richards *et al.* (2006) study does not support the petitioners' claim that reservoirs are suitable habitat. Their absence from reservoirs and areas of organic, fine sediments suggests that this species may be limited to aerobic substrates flushed by moving water (Richards *et al.* 2006, p. 23).

At the time of listing, in 1992, we stated that: ''Bliss Rapids snails occur on stable, cobble-boulder substratum only in flowing waters in the unimpounded reaches of [the] mainstem Snake River and also in a few spring alcove habitats in the Hagerman Valley. The species does not burrow in sediments and normally avoids surfaces with attached plants. Known river populations (or colonies) of the Bliss Rapids snail occur only in areas associated with spring influences or rapids edge environments and tend to flank shorelines. They are found at varying depths if dissolved oxygen and temperature requirements persist and are found in shallow (< 1 cm (.4 in)) permanent cold springs (Frest and Johannes 1992a)'' (57 FR 59245).

Information in our files suggests that populations are consistently larger, at least in terms of density and relative abundance, in coldwater springs and spring-fed tributaries compared to mainstem Snake River locations (Stephenson and Bean 2003, p. 12; Stephenson *et al.* 2004, pp. 14, 24; Clark *et al.* 2005, pp. 7, 46–47; Richards *et al.* 2006, pp. 37–38, 97–99), and the likelihood of Bliss Rapids snail occurrence decreases with increasing water temperature in riverine habitats (Richards *et al.* 2006, p. 42).

Based on information presented by the petitioner, along with information in our files, most of the basic habitat requirements for Bliss Rapids snails are reaffirmed. Current information documents the occurrence of low densities of Bliss Rapids snails in Snake River reaches without obvious spring influence (based on visual inspection). The petitioners' claim that Bliss Rapids snails can live in reservoirs is not supported by the information provided. In fact, data provided by the petitioner strongly suggest that reservoirs do not provide suitable habitat for the species and likely impede metapopulation connectivity (Richards *et al.* 2006, pp. 38–39, p. 119).

Range

The petitioners claim that the species is more widely distributed than previously known. They provided a status report by Richards *et al.* (2006) as the primary source of information to support their claim. Richards *et al.* (2006, pp. 33–34) found that, as of 2006, the Bliss Rapids snail was documented at 837 collection points in the free-flowing mid-Snake River, as compared with less than 15 collection points at the time of listing. Richards *et al.* (2006, pp. 119, 123) also state that Bliss Rapids snails exist as possibly 27 discontinuous populations along the Snake River, including 5 within river habitats and 22 in spring or spring-influenced habitats. Richards *et al.* (2006, pp. 34–35) state that Bliss Rapids snails were recorded in every one of the 22 non-reservoir miles (35 km) from River Mile (RM) 547.7, upstream to the head of Upper Salmon Falls Reservoir at RM 589.2 (a distance of 41.5 river miles (66.8 river km)). A total of 19.5 of those 41.5 river miles (31.4 of those 66.8 river km) are in-reservoir habitat, and therefore are not suitable for Bliss Rapids snails.

At the time of listing we stated that: ''Based on live collections, the species currently exists as discontinuously distributed populations over 204 river miles within its historic range. These populations are primarily concentrated in the Hagerman reach in tailwaters of Bliss and Lower Salmon Dams and several unpolluted springs (i.e., Thousand Springs, Minnie Miller Springs, Banbury Springs, Niagara Springs, and Box Canyon Springs)'' (57 FR 59245).

Information in our files now suggests that the farthest upstream population noted in the listing rule (i.e., the observation above American Falls at RM 749.8 (57 FR 59243)) may have been in error. Several factors, when considered together, support this conclusion: (1) The reported observation is 151 river miles (243 river km) away from the nearest confirmed location of the Bliss Rapids snail (i.e., Niagara Springs at RM 599), (2) the vouchered specimen cannot be located, and (3) hundreds of samples for snails have been collected in and above American Falls Reservoir since the reported collection without further evidence of the species at that location.

Given the information provided by the petitioner and other information in our files, we now know the Bliss Rapids snail to be distributed discontinuously over approximately 65 river miles (105 river km), rather than over 204 river miles (328 river km), as we stated in the listing rule (57 FR 59243). However, if we discount the observation above American Falls, which we now believe to be unreliable, the species is more widely and more continuously distributed than previously thought (Richards *et al.* 2006, p. 28).

**Construction of New Hydropower Dams**

The petition states that threats to Bliss Rapids snail habitat from future hydropower development are not as they were perceived when the species was listed in 1992. The petitioners provided the following documents as evidence that hydropower permits are no longer moving forward: (1) A 2002 notice of surrender of preliminary permit for the River Side Project (Federal Energy Regulatory Commission (FERC) 2002), (2) 2002 Federal Energy Regulatory

Commission (FERC) orders denying application for preliminary permits for the Eagle Rock and Star Falls Hydroelectric Projects (FERC 2002a, 2002b), and (3) a 2003 notice of surrender of preliminary permit for the Auger Falls Project (FERC 2003). The petitioners also provided documents from the State of Idaho (Idaho 2006) and Richards *et al.* (2006) indicating that all recent permits for the construction of new dams along the Mid-Snake River reach where the Bliss Rapids snail occurs have either lapsed or have been denied by the FERC.

At the time of listing, there were six active proposals for new hydroelectric projects in the middle-Snake River. In our listing rule, we stated: ''Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of [the Bliss Rapids snail]. Dam construction threatens the [Bliss Rapids snail] through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusk habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce dissolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of these snails'' (57 FR 59251).

We have no information in our files suggesting that future hydropower development in the middle-Snake River is likely to occur; therefore, we accept the petitioner's claim that the threats from hydropower development have dissipated since the time of listing.

Operation of Existing Hydropower Dams

The status report provided by the petitioner (Richards *et al.* 2006) states that threats to Bliss Rapids snail habitat from the operation of hydropower dams (i.e., peak loading) are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, p. 92) state that free-flowing Bliss Rapids snail habitat downstream of the dams is improved because fine sediments settle in the reservoirs above the dams, resulting in reduced fine sediments and increased rocky substrates, the preferred habitat of the Bliss Rapids snail, downstream of the dam. They also state that rapid changes in flow below hydropower dams have not eliminated Bliss Rapids snails from shallow shoreline areas; on the contrary, highest densities of riverine Bliss Rapids snail populations directly below hydropower dams occurred in the zones of highest flow fluctuations (Richards *et al.* 2006, p. 92).

Richards *et al.* (2006) cite a laboratory exposure study (Richards 2006) that concluded Bliss Rapids snails could survive for many hours to several days in moist conditions (i.e., undersides of cobbles) when air temperatures were greater than 32 °F (0 °C). In an ongoing field study, Richards (unpublished data, cited in Richards *et al.* 2006, pp. 125–126) also found that Bliss Rapids snails could survive on the damp undersides of exposed cobbles alongside the mid-Snake River for up to several days. Because fluctuation of water levels due to load-following only occurred for several hours at a time (William H. Clark, Idaho Power Company, personal communication, cited in Richards *et al.* 2006, p. 126), Richards *et al.* (2006, pp. 125–126) concluded that direct mortality to Bliss Rapids snails from exposure due to load-following events should be minimal. The petitioners did not provide any data that assesses the sub-lethal effects (e.g., impacts to reproduction, food sources, etc.) of peak-loading.

At the time of listing, we stated: ''Peak-loading, the practice of artificially raising and lowering river levels to meet short-term electrical needs by local run-of-the-river hydroelectric projects also threatens [the Bliss rapids snail]. Peak-loading is a frequent and sporadic practice that results in dewatering mollusk habitats in shallow, littoral shoreline areas * * * these diurnal water fluctuations prevent the [Bliss Rapids snail] from occupying the most favorable habitats.''

Information in our files suggests that air temperatures within the range of Bliss Rapids snails regularly fall below 32 °F (0 °C) between November and March (Richards 2006, p. 28) and that the amount of time Bliss Rapids snails can survive while exposed to air temperatures below freezing is significantly less than at 32 °F (0 °C) (e.g., in less than an hour, half of the individuals in a laboratory trial subjected to a temperature of 19 °F (−7 °C) died) (Richards 2006, p. 12). Therefore, peak-loading during winter months may cause Bliss Rapids some snail mortality (Richards 2006, p. 15), but field studies have not been conducted to assess the likely impact on the population. Furthermore, we have no data in our files that assesses the sub-lethal effects of peak-loading on Bliss Rapids snails.

Although there are some uncertainties regarding the actual effects of peak-loading on Bliss Rapids snails in the wild, the petitioners have presented substantial information suggesting that the threats from peak-loading may be less than we perceived at the time of listing.

Water Quality

The status report provided by the petitioner (Richards *et al.* 2006, pp. 5–6) states that threats to Bliss Rapids snail habitat from water pollution are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, pp. 5–6, 86) state that significant nutrient and sediment reduction has occurred in the Snake River following implementation of the Idaho Nutrient Management Act and regulated Total Maximum Daily Load (TMDL) reductions from the mid-1990s to the present.

Hypereutrophy (planktonic algal blooms and nuisance rooted aquatic plant growths), prior to listing in 1992, was very severe during drought cycles when deposition of sediments and organic matter blanketed river substrate, often resulting in unsuitable habitat conditions for Bliss Rapids snails. Although some nutrient and sediment reduction has occurred since listing (Richards *et al.* 2006, p. 5), water quality of the river from RM 600 to 589 is subject to ''very large inflows'' of agriculture and aquaculture wastewater flowing to the river below Twin Falls to lower Salmon Falls dam at RM 572; as a result, nutrient and sediment concentrations increase during low summer flows (Richards *et al.* 2006, p. 91). Furthermore, the highest densities and occurrence frequencies of Bliss Rapids snails in riverine habitats were immediately downstream of the mid-Snake river reach considered to be the most seriously polluted reach of the river (from Shoshone Falls downstream to Upper Salmon Falls Dam (Richards *et al.* 2006, p. 33)).

Information in our files shows that phosphorus concentrations, the key nutrient leading to hypereutrophic conditions in the middle Snake River, exceeded Environmental Protection Agency (EPA) guidelines for the control of nuisance algae at numerous locations along the Snake River from 1989 to 2002, including areas immediately upstream of Bliss Rapids snail colonies (Hardy *et al.* 2005, p. 13). Several water quality assessments have been completed by the EPA, U.S. Bureau of Reclamation (USBR), and IPC, and all generally agree that water quality in the Snake River of southern Idaho meets Idaho water quality standards for aquatic life for some months of the year, but may not meet these standards when temperatures are high and flows are low

(Meitl 2002, p. 33). Idaho Department of Environmental Quality's (IDEQ) 2005 performance and progress report to the EPA states that projects are meeting the Idaho non-point source pollution program goals (IDEQ 2006, p. 8). However, others report that water quality has not improved appreciably between 1989 and 2002 (Hardy *et al.* 2005, pp. 19–21, 49, 51).

Although the highest densities and occurrence frequencies of Bliss Rapids snails in riverine habitat were recorded immediately downstream of the mid-Snake River reach considered to be the most seriously polluted reach of the river (from Shoshone Falls downstream to Upper Salmon Falls Dam), this reach also receives a large infusion of coldwater spring outflow. No riverine Bliss Rapids snails were detected upstream of Upper Salmon Falls Dam (Richards *et al.* 2006, pp. 31–32, 35–37).

Given the information provided by the petitioner and other information in our files, we find that there are some uncertainties regarding the effects of degraded water quality in the Snake River on Bliss Rapids snails; however, we believe the petitioners have presented substantial information suggesting that the threats from degraded water quality may be less than we perceived at the time of listing.

Water Diversions (Springs)

The status report provided by the petitioner (Richards *et al.* 2006, p. 6) states that some coldwater spring habitats within the range of the Bliss Rapids snail previously threatened by water development have been preserved in corporate or public trusteeship.

Information in our files shows that springs occupied by Bliss Rapids snails that are protected from further water development include Thousand Springs, Box Canyon Springs (Newcomer in litt. 2005), and Banbury Springs (Holmstead and Holthuijzen 2005). However, there are hundreds of other springs in the Hagerman Valley, and nearly all exist on private land in areas that have not been surveyed for Bliss Rapids snails due to lack of access. We do not know whether these springs are being protected or whether they have already been developed for aquaculture, hydropower, or irrigation water.

Based on information provided by the petitioner, along with other information in our files, some spring habitats occupied by Bliss Rapids snails are being protected in preserves. However, the status of coldwater springs on some private lands remains largely unknown.

**Water Diversions (Snake River)**

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to Bliss Rapids snail habitat from diversion of water from the Snake River for irrigation and aquaculture are not as they were perceived when the species was listed in 1992. According to Richards *et al.* (2006, p. 83), over the past 35 years, the river has experienced higher energy flushing cycles than in the prior 60 years. High mean annual flows reached approximately 18,000 cubic feet per second (cfs) in 1984 and 1997. In 2006, flushing flows had again occurred with sustained mean daily flows at King Hill in excess of 20,000 cfs (Richards *et al.* 2006, pp. 83–84).

At the time of listing, we stated: ''Water quality continues to degrade in the middle Snake River from increased water use and withdrawal, aggravated by recent drought-induced low flows. This 121 mile (195 kilometer) stretch of the Snake River [i.e., the middle Snake River] is impacted by agricultural return flows; runoff from between 500 and 600 dairies and feedlots; effluent from over 140 private, state, and Federal fish culture facilities; and point source (e.g., municipal sewage) discharges (Idaho Department of Health and Welfare (IDHW) 1991a). These factors contribute to increased nutrient loads and concentrations which in turn adversely impact the lotic species. Nutrient loading contributes to dense blooms of free-living and attached filamentous algae, which the species cannot utilize. This algae will often cover rock surfaces, effectively displacing suitable snail habitats and food resources. Stream sediments also become anoxic as high biochemical oxygen demand during the aquatic growing season and seasonal algae die offs occur.''

We accept the characterization of the flow data at King Hill provided by the petitioner. However, the petitioners have not explained how a few years of flushing flows reduces the threat of high concentrations of pollutants due to low Snake River flows in other years. Therefore, we find that the petition has not presented substantial information suggesting that threat of mainstem Snake River water diversions to Bliss Rapids snails has diminished.

Groundwater Mining

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to Bliss Rapids snail coldwater spring influenced habitats from groundwater mining for irrigation and aquaculture are not as they were perceived when the species was listed in 1992. Average annual spring flows increased from about 4,400 cfs in 1910 to approximately 6,500 cfs in the early 1960s because of widespread flood irrigation causing artificial recharge of the aquifer (Richards *et al.* 2006, p. 84, 87). As a result of more efficient water practices from 1960 to the present (i.e., switching from flood irrigation to more efficient center-pivot irrigation systems) more water was pumped from the aquifer while water percolation into the aquifer declined, resulting in declines in average annual spring flows to about 5,000 cfs (Richards *et al.* 2006, pp. 84, 87).

The petitioners also provided a number of documents indicating that there is a moratorium on some groundwater development in the eastern Snake River plain (Idaho 2004) and that there are current efforts to artificially recharge the Snake River aquifer to stabilize or increase spring flows (Idaho 2005). These efforts have the potential to benefit the Bliss Rapids snails, but their effects have not yet been realized in terms of stable or increasing spring flows (Richards *et al.* 2006, p. 84).

Information in our files shows that there are several in-stream flow targets, set by the State of Idaho, which have the potential to conserve populations of Bliss Rapids snails (IDWR 2006a). However, water rights with earlier priority dates have the right to fill their needs before the minimum stream flow is considered. Senior diversions can legally dewater the stream in a drought year or when low flows occur, leaving no water for the minimum stream flow (IDWR 2006b). Therefore, the current and future conservation benefits of recently established in-stream flow targets for the Bliss Rapids snail are uncertain.

Information provided by the petitioner, along with other information in our files, indicates that the State of Idaho has taken steps to improve groundwater recharge, and limit new groundwater development with the eastern Snake River plain; however, the Snake River Plain aquifer level continues to decline and instream-flow targets and moratoriums on new groundwater development do not prevent those with senior water rights from diminishing flows in drought years or during low flows. Therefore, we find that the petitioners have not presented substantial information indicating that the threat of groundwater mining to the Bliss Rapids snail may be less than the best available information indicated at the time of listing in 1992.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petitioners did not provide information regarding the overutilization of Bliss Rapids snails for commercial, recreational, scientific, or educational purposes, and we do not have information in our files suggesting that this factor is a threat to the species.

*C. Disease or Predation*

The petitioners did not provide information regarding the effects of disease or predation on Bliss Rapids snails. At the time of listing, we stated that changes in the fish fauna of the middle Snake River had been suggested as a potential threat to the Bliss Rapids snail (57 FR 59254). At that time, we had no data to support this suggestion, and we still have no information in our files suggesting that disease or predation are significant threats to the Bliss Rapids snail.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The petitioners provided numerous documents regarding water rights, aquifer recharge, and groundwater management in the Snake River and Snake River Plain aquifer (Idaho 2006 in litt.). These documents indicate that the State of Idaho has regulatory mechanisms to limit or exclude the development of new surface water or groundwater rights within the range of the Bliss Rapids snail. These documents also indicate that the State has regulatory mechanisms to prioritize existing water rights based on seniority.

At the time of listing, we found inadequate regulatory mechanisms to be a threat because (1) regulations were inadequate to curb further water withdrawal from groundwater spring outflows or tributary spring streams, (2) it was unlikely that pollution control regulations would reverse the trend in nutrient loading any time soon, (3) there was a lack of protections for invertebrate species in Idaho, and (4) regulations did not require FERC or the U.S. Army Corp of Engineers to address Service concerns regarding licensing hydroelectric projects or permitting projects under the Clean Water Act for unlisted snails.

Information provided by the petitioner, along with information in our files, suggests that the threat to Bliss Rapids snails from inadequate regulatory mechanisms may be less than we perceived at the time of listing. Although there are no regulatory mechanisms in place to prevent senior diversions under current water rights allocations from dewatering the stream (see Groundwater Mining section above), there are now regulatory mechanisms to limit future surface water and groundwater development, and some pollution control regulations have been implemented (see Water Quality section above).

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The status report provided by the petitioner (Richards *et al.* 2006, p. 5) states that threats to the Bliss Rapids snail from the New Zealand mudsnail (*Potamopyrgus antipodarum*) are not as they were perceived when the species was listed in 1992. Richards *et al.* (2006, p. 6) note that the New Zealand mudsnail has not caused any local extirpations of Bliss Rapids snails, and that they have not colonized headwater spring habitats. However, in areas where the species do coexist, Richards *et al.* (2006, pp. 61, 64, 68) found that Bliss Rapids snails may be competitively excluded by New Zealand mudsnails, and that Bliss Rapids snail densities would be higher in the absence of New Zealand mudsnails.

At the time of listing, we stated that New Zealand mudsnails were not abundant in coldwater springflows with colonies of Bliss Rapids snails, but that they did compete with the Bliss Rapids snail in the mainstem Snake River (57 FR 59254). We have no direct evidence that New Zealand mudsnails have displaced colonies of Bliss Rapids snails, but New Zealand mudsnails have been documented in dark mats at densities of nearly 400 individuals per square inch in free-flowing habitats within the range of the Bliss Rapids snail (57 FR 59254). Furthermore, New Zealand mudsnails have become established in every spring-fed creek or tributary to the Hagerman Reach that has been surveyed (USFWS 2007).

Based on information provided by the petitioner, along with information in our files, New Zealand mudsnails appear to limit Bliss Rapids snail densities, except in headwater spring habitats. Although the information provided by the petitioners clarifies our understanding of competitive interactions between New Zealand mudsnails and Bliss Rapids snails, the primary conclusions of their review are consistent with our analysis at the time of listing. Therefore, we find that the petitioners have not provided substantial information indicating that the threats to Bliss rapids snails from New Zealand mudsnails may be less than the best available information indicated at the time of listing in 1992.

**Finding**

We have reviewed the delisting petition and the supporting documents, as well as other information in our files. We find that the delisting petition and other information in our files presents substantial information that delisting the Bliss Rapids snail may be warranted, and we are initiating a status review. Petitioners have provided a detailed status report that updates the state of knowledge regarding Bliss Rapids snail habitat use, distribution, and threats. The status report provides substantial information indicating that the Bliss Rapids snail is more widely distributed in the Hagerman area of southern Idaho than previously recorded, that it has been documented in areas without obvious spring influence based on visual inspections, and that threats from hydropower development and ongoing operation of hydropower dams may not be what we perceived when we listed the species in 1992. The status report also provides substantial information indicating that additional regulatory mechanisms now exist that could limit water development and water pollution in Bliss Rapids snail habitat. Based on our review of the petition and information in our files, other threats to the species remain, but we will fully evaluate these and determine whether or not delisting is warranted, in our 12-month finding in accordance with section 4(b)(3)(B) of the Act.

5-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. We initiated a 5-year review for the Bliss Rapids snail on July 27, 2004 (69 FR 44676). Because we are initiating a 12-month finding with this notice, and because the 12-month finding and 5-year review serve a similar purpose (i.e., to determine the appropriate classification of a species under the Act), the results of our 12-month finding will be adopted for our 5-year review.

**References**

A complete list of all references cited in this finding is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this document is Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

**Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2007.

**Randall B. Luthi,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 07–2812 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Yellow-Billed Loon as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the yellow-billed loon (*Gavia adamsii*) as threatened or endangered, under the Endangered Species Act of 1973, as amended. We find that the petition presents substantial scientific information indicating that the petitioned action may be warranted. As a result of this action, the Service also announces the commencement of a thorough status review to determine if listing the yellow-billed loon may be warranted. We ask the public to submit to us any pertinent information concerning the status of or threats to this species. We will also be working with other agencies to gain additional data where gaps in our current information on this species exist. In addition, together with the Bureau of Land Management, the Alaska Departments of Fish and Game and Natural Resources, the U.S. Geological Survey, and the National Park Service, we have developed a Conservation Agreement for the yellow-billed loon, which addresses a subset of threats to the loon in a subset of the species' range. We invite comments on management strategies and research needs that should be considered in annual reviews of the Conservation Agreement.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding for this petition comments and information must be submitted to us by August 6, 2007.

**ADDRESSES:** Data, information, and comments concerning this finding may be submitted by any one of the following methods:

1. You may mail or hand-deliver written comments and information to: Yellow-billed Loon Comments, Endangered Species Branch, Fairbanks Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, 101–12th Ave., Room 110, Fairbanks, AK 99701.

2. You may fax your comments to (907) 456–0208. Please clearly indicate that you are submitting comments for the Yellow-billed Loon finding on the cover sheet.

3. You may send your comments by electronic mail (e-mail) to *YBLoon@fws.gov.* Please see the Public Information Solicited section of this document for information on submitting e-mail comments.

4. You may submit comments via the Internet at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

The petition, findings, and supporting information are available for public inspection, by appointment, during normal business hours, at the Fairbanks Fish and Wildlife Field Office at the address listed above. The Yellow-billed Loon Conservation Agreement, which addresses a subset of threats to the loon in a subset of the species' range, is available at or can be requested from the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ted Swem, Fairbanks Fish and Wildlife Field Office (see **ADDRESSES**) (telephone 907–456–0441; facsimile 907–456–0208).

**SUPPLEMENTARY INFORMATION:**

### Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are particularly seeking the following information on the yellow-billed loon:

(1) Additional information on the life history, ecology, and distribution of the species;

(2) The status of the species and any trend information from the United States, Canada, Europe, and Asia;

(3) Potential threats to the species on its nesting grounds, wintering areas, or migration corridors;

(4) Ongoing management measures that may be important with regard to the conservation of the yellow-billed loon throughout its range;

(5) The extent and nature of the use of the species for subsistence purposes;

(6) The species' tolerance for human interaction and studies documenting flushing distances;

(7) The incidence of mortality as a result of bycatch from fishing on lakes and at sea;

(8) Conservation and management strategies that should be considered for inclusion in annual reviews of the Yellow-billed Loon Conservation Agreement; and

(9) Whether the U.S. breeding population constitutes a distinct population segment.

If you wish to comment, you may submit your comments and materials concerning this finding to the Endangered Species Branch Chief (see **ADDRESSES**). If you wish to comment by e-mail, please include ''*Attn:* Yellow-billed Loon'' in the beginning of your message. Please include your name and return address in your e-mail message (anonymous comments will not be considered). If you do not receive a confirmation from the system that we have received your e-mail message, or in the event that our Internet connection is not functional, please submit your comments in writing using one of the alternate methods described above.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

In making this finding, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our process of coming to a 90-day finding under section 4(b)(3)(A) of the Act and section 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the ''substantial information'' threshold. A substantial finding should be made when the Service deems that adequate and reliable information has been presented that would lead a reasonable person to believe that the petitioned action may be warranted.

On April 5, 2004, we received a petition from the Center for Biological Diversity (CBD) (Sitka, AK), Natural Resources Defense Council (Washington, DC), Pacific Environment (San Francisco, CA), Trustees for Alaska (Anchorage, AK), Kaira Club (Chukotka, Anadyr, Russia), Kronotsky Nature Preserve (Kamchatka Region, Russia), Taiga Rangers (Khabarovsk Region, Russia), Yuzhno-Sakhalinsk Local Public Fund (Sakhalin Region, Russia), Interregional Public Charitable Organization of Far Eastern Resource Centers (Vladivostok, Russia), Kamchatka Branch of Pacific Institute of Geography (Petropavlovsk-Kamchatsky, Russia), and Kamchatka League of Independent Experts (Petropavlovsk-Kamchatsky, Russia) to list the yellow-billed loon (*Gavia adamsii*) as endangered or threatened throughout its range, or as a Distinct Population Segment, and to designate critical habitat once listed. The petition summarizes threats to the species based on CBD's review of Fair's (2002) report, prepared for the Natural Resources Defense Council and Trustees for Alaska, on the status and significance of the species in Alaska as well as CBD's review of the scientific literature. The 63-plus page petition describes multiple threats to the yellow-billed loon, including destruction or modification of habitats due to development and pollution, lack of regulatory protection, and other factors such as mortality from hunting and drowning in gill nets. The petition also emphasizes that additional factors, including limited and specific breeding habitats, a small global population, and low reproductive rate, make yellow-billed loon populations more susceptible to the above-mentioned threats and less likely to recover after population declines.

**Development of a Conservation Agreement**

Yellow-billed loons may benefit greatly from a Conservation Agreement among agencies (the Bureau of Land Management (BLM), the National Park Service, and the Service) with management and conservation responsibilities on public lands that include much of the loon's breeding range in the United States. At present, the Service and the Alaska Department of Fish and Game cooperatively promulgate migratory bird hunting and subsistence regulations, and the U.S. Geological Survey has ongoing yellow-billed loon studies. The BLM and the Service, with other agencies, have developed a Conservation Agreement (Agreement) dated September 30, 2006, for the yellow-billed loon that addresses a subset of threats (including fisheries bycatch, habitat loss from industrial development, and disturbance) for yellow-billed loons breeding in northern and western Alaska. We will be conducting annual review of the Agreement and as such, we welcome suggestions for conservation and management strategies that should be considered. The strategies for conservation in the Agreement include: (1) Implement specific actions to protect yellow-billed loons and their breeding habitats in Alaska from potential impacts of land uses and management activities, including oil and gas exploration and development; (2) inventory and monitor yellow-billed loon breeding populations in Alaska; (3) determine and reduce, if significant, the impact of subsistence activities on yellow-billed loons (including subsistence fisheries and hunting) in Alaska; and (4) conduct biological research on yellow-billed loons, including response to management actions.

**Biology and Distribution**

The following information regarding the description and natural history of the yellow-billed loon (American Ornithologist's Union (AOU) 2003) has been condensed from these sources: Earnst *et al.* (2006, 2005), Evers (2004), Mallek *et al.* (2004), Johnson *et al.* (1999, 1998, 1997, 1996), Larned *et al.* (2003), Fair (2002), North (1994), Smith *et al.* (1994, 1993), Field *et al.* (1993), and North and Ryan (1989). These and other references are cited for data of particular relevance to this finding.

The yellow-billed loon (Order Gaviiformes, Family Gaviidae) is one of the largest of the five loon species and similar in appearance to the common loon (*Gavia immer*). Yellow-billed loons are distinguished from common loons by their larger yellow or ivory bill. Adults weigh 4,000 to 6,000 grams (8.8 to 13.2 pounds) and are 774 to 920 millimeters (30 to 37 inches) in length. Presumably, as with common loons, average male body mass and size is greater than female mass and size. Breeding (alternate) plumage of adults of both sexes is black above with white spots on the wings and underside, and white stripes on the neck. Non-breeding (basic) plumage is gray-brown with fewer and less distinct white spots than breeding plumage, with paler undersides and head, and a blue-gray bill. Hatchlings have dark brown and gray down, and juveniles are gray with a paler head. There are no recognized subspecies or geographic variations. Yellow-billed loons are specialized for aquatic foraging and are unable to fly from land, with a streamlined shape and legs near the rear of the body.

Yellow-billed loons nest exclusively in coastal and inland low-lying tundra from 62 to 74° N latitude, in association with permanent, fish-bearing lakes. Populations are thought to be limited primarily by breeding habitat, specifically nesting and brood-rearing lakes (North 1994, p. 16). Lakes that support breeding loons have abundant fish populations; depths greater than 2 meters (m) or 6.5 feet (ft) and water under the ice during winter; large areas (at least 13.4 hectares [ha] or 33 acres [ac]) (North & Ryan 1989, p. 302); often connections to streams that may supply fish; highly convoluted, vegetated, and low-lying shorelines; clear water; and dependable water levels (Earnst et al. 2006, p. 227; North 1994, p. 6). Breeding lakes may be near major rivers, but are usually not connected to them, possibly because fluctuating water levels can flood nests or cause turbidity that compromises foraging success.

Breeding territories (areas defended against conspecifics and other loon species, particularly Pacific loons [*Gavia pacifica*]), may include one or more lakes or parts of lakes. Territory size, dependent upon lake size and quality, ranged from 13.8 to greater than 100 ha (34 to greater than 247 ac) on the Colville River Delta, AK (North 1986, as cited in North 1994, p. 10). It is thought that loons occupy the same breeding territory throughout their reproductive life; certainly, breeding lakes are ''known to be reoccupied over long time

spans'' (North 1994, p. 10), most likely by the same monogamous pair (North 1994, p. 10), similar to common loons (Evers 2004, p. 13).

Yellow-billed loons feed on fish and aquatic invertebrates. Marine prey species include sculpins (*Leptocottus armatus, Myoxocephalus* sp.); tomcod (*Microgadus proximus*) and rock cod (*Sebastodes* sp.); invertebrates such as amphipods, isopods, shrimps, hermit crabs (*Pagarus* sp.), and marine worms (*Nereus* sp.); and Pacific sand dabs (*Citharichthys sordidus*). During the breeding season, freshwater prey may include ninespine sticklebacks (*Pungitius pungitius*), Alaska blackfish (*Dallia pectoralis*), fourhorn sculpins (*M. quadricornus*), least cisco (*Coregonus sardinella*), and freshwater amphipods, isopods, insects, and spiders. Freshwater foraging habitats include lakes, rivers, and the nearshore marine environment for non-breeders; young are fed almost entirely from the brood-rearing lake (North 1994, p. 14).

Nest sites are usually located on islands, hummocks, or peninsulas, along low shorelines, within 1 m (3 ft) of water. The nest location, which may be used in multiple years, usually provides a better view of the surrounding land and water than other available lakeshore locations. Nests are constructed of mud or peat, and are often lined with vegetation. One or two large, smooth, mottled brown eggs are laid in mid-to late June; hatching occurs after 27 to 28 days of incubation by both sexes. Although the actual age at which young are capable of flight is unknown, it is probably similar to common loons (8 to 9, possibly 11, weeks). The young leave the nest soon after hatching, and the family may move between natal and brood-rearing lakes. Both males and females participate in feeding and caring for young. In spite of the occasional replacement of eggs after nest predation, the short Arctic summer makes it impossible to raise more than one brood.

There is no reliable scientific information on lifespan and survivorship, but as large-bodied birds with low clutch size, yellow-billed loons are probably K-selected (long-lived and dependent upon high annual adult survival to maintain populations). Assuming demography similar to common loons (Evers 2004, p. 17–18), individuals on average reach sexual maturity at three years of age, but competition for breeding territories may delay successful reproduction until six or seven years of age.

Reproductive success, although studied rarely and with differing methodologies, is low and highly variable. For example, on the Colville River Delta, the percent of territorial pairs that nested were 76, 79, 42, and 71 in 1983, 1984, 1989, and 1993 respectively (Smith et al. 1994, p. 18; Field et al. 1993, p. 329). Aerial surveys on the Colville River Delta from 1993 to 2003 documented annual variation in number of nests (16 to 26), number of broods (3 to 14), and total number of chicks (3 to 17) from 1993 to 2003 (Johnson 2004; Wildman 2004a; Johnson et al. 1999, p. 48). Specifically, in 2000 and 2001, there were only 3 young among 16 observed nests and 4 young among 20 observed nests, respectively, which is relatively low compared to other years, possibly due to late summer storms, severe spring flooding, or both (Wildman 2004b). In 1995 to 2000 on the Colville River Delta, Earnst (2004a, p. 1) also documented high annual variability in several reproductive parameters, including number of territorial pairs nesting, clutch size, hatch date, proportion of eggs hatching, and proportion of chicks surviving to six weeks of age.

Yellow-billed loons breed in the freshwater treeless tundra of Alaska (sparsely in western Alaska and the foothills of the Brooks Range, more abundantly on the North Slope), in Canada east of the Mackenzie Delta and west of Hudson's Bay, in arctic Russia in the relatively narrow strip of coastal tundra from the Chukchi Peninsula in the east to the Taymyr Peninsula and the areas of the Novaya Zemlya and Pechora Rivers in the west, and rarely in far northern Norway and Finland. Because preferred breeding habitats are patchy and sparsely distributed across the yellow-billed loon's range, breeding birds are found in clumped and concentrated distributions. Based on aerial survey data (1998 to 2001 U.S. Fish and Wildlife Service Alaska Coastal Plain (ACP) and North Slope Eider (NSE) surveys), most of the population in Alaska occurred within 6 concentrations, which together covered only 15 percent of the surveyed area yet contained 84 percent of yellow-billed loon sightings. The largest concentration area was between the Meade and Ikpikpuk Rivers. It covered only 5 percent of the survey area, but had 30 percent of yellow-billed loon sightings. Other notable concentration areas were on the Colville River Delta and west, southwest, and east of Teshukpuk Lake. In Canada, concentration areas include Banks Island; western Victoria Island; the mainland south of the Kent Peninsula, east of Bathhurst Inlet and west of Ellice River; the west side of Boothia Peninsula, and the lake district between Great Slave Lake and Baker Lake, including the Thelon Game Sanctuary (North 1994, p. 3). In Russia, breeding concentrations have been identified east of Chaun Bay on the Chukchi Peninsula (Fair 2002, pp. 17 and 19), and along the Kolyma River Delta (Earnst 2004a, p. 1).

The wintering range of the yellow-billed loon includes nearshore coastal waters from southcentral Alaska south to Puget Sound; from the Pacific coast of Siberia south to the Yellow Sea; and occasionally in northern Europe from Great Britain to Norway. Wintering habitats have less specific characteristics than breeding habitats but are primarily in protected nearshore marine waters. A small proportion of yellow-billed loons breeding in interior North America may winter on large inland freshwater lakes (North 1994, p. 3).

Yellow-billed loon migration routes are thought to be primarily marine, sometimes far offshore. Migration route and timing is possibly influenced by ocean ice conditions, although inland breeders may migrate along chains of inland lakes. In 2002 and 2003, 11 yellow-billed loons along the North Slope of Alaska were outfitted with satellite transmitters. All 11 of these loons migrated to Asia, predominantly along the Russian coastline, and wintered in the Yellow Sea off China, North Korea, Russia, and Japan (near Hokkaido) (Schmutz 2004, p. 1). Most of these yellow-billed loons departed breeding areas in late September, arrived in wintering locations in mid-November, started spring migration in April, and arrived on breeding grounds in the first half of June; these are similar to breeding ground arrival dates reported by North (1994, p. 5). Non-breeders or failed nesters may start fall migration in July; non-breeders and juveniles may forego spring migration altogether and spend the summer in wintering areas. Yellow-billed loons are thought to migrate singly or in pairs, although large groups are occasionally seen at staging (temporary resting or loafing) areas.

The only known comprehensive population estimates of yellow-billed loons are derived from the two Arctic coastal plain waterfowl surveys conducted in Alaska annually in early June (NSE survey) and late June (ACP survey) by the Service's Migratory Bird Management program. The long-term (1986 to 2003) mean estimate of yellow-billed loons on the Arctic coastal plain is 2,919 (95 percent confidence interval = 2,450 to 3,387) (ACP estimate; Mallek et al. 2004, p. 10); a 12-year mean (1992 to 2003) based on both surveys and a

visibility correction factor results in a similar estimate (Earnst et al. 2005, p. 289). A 1-year (1993) estimate of breeding yellow-billed loons on the Seward Peninsula was 680. There is anecdotal information of 50 yellow-billed loons on St. Lawrence Island and approximately the same number in the Selawik wetlands. When these are added to the coastal plain estimates, the estimated total number of yellow-billed loons on Alaska breeding grounds is approximately 3,500 to 4,000. (Not all are breeders; the ACP and NSE surveys include, but do not distinguish between, breeding and non-breeding yellow-billed loons. The 3- to 5-year-old reproductively mature individuals are capable of breeding, yet due to limited availability of suitable breeding territories, only a portion of these individuals may be present and, therefore, visible on the breeding grounds. The 1- to 2-year-old juveniles likely stay at sea and are not counted.) The total Alaska yellow-billed loon population, including those birds not occupying breeding areas during summer, may be between 3,700 to 4,900, assuming yellow-billed loon demography (age-specific survival, productivity, and average age of first breeding) is similar to that of common loons (Evers 2004, p. 16–20).

The Service is unaware of scientifically valid population estimates for other areas. Yellow-billed loons are not summarized in the North American Spring Waterfowl Surveys (U.S. Fish and Wildlife Service 2003, p. 1–53), and Canadian population estimates do not exist (*http://www.bsc-eoc.org/clls-bw1.html*, accessed January 17, 2006). However, Fair (2002, p. 29) speculated, based on anecdotal local density and habitat information, that 8,000 yellow-billed loons breed in Canada and 5,000 breed in Russia. Combining these estimates, the worldwide breeding-ground yellow-billed loon population is estimated at 16,500.

Given the lack of comprehensive scientific information relative to population estimates, there are few ways to assess population trends. In Alaska, the total number of yellow-billed loons counted in surveys is small (resulting in wide confidence intervals around annual estimates), but estimates over the last two decades do not suggest a change in the number of adults on Alaskan breeding grounds. Additional analysis of ACP and NSE survey data, using a multivariate model to account for the confounding factors of spring timing and observer experience, also indicates no discernible trend in population numbers. However, the statistical power (or ability to detect a significant change) is relatively low; a minimum of 10.4 years is required to detect a 50 percent decline in the surveyed population (based on NSE data; Larned *et al.* 2003, Fig. 8). Thus, in Alaska, the breeding ground population could decline to less than 2,000 individuals before current survey methods would detect a significant declining trend. The total Alaska population could decline by a larger percentage because breeding ground surveys do not include population components that remain at sea during the breeding season (pre-breeding and reproductively mature but non-breeding individuals). Thus, a significant decline in these population components in Alaska could not be readily detected with current surveys. Further, any decline in yellow-billed loons in Russia and Canada could not be detected because these are not currently surveyed. Finally, a decline in the breeding component may be masked by movement of previously uncounted individuals to vacated territories (resulting in sinks rather than productive breeding habitats); this decline would not be detected with current surveys.

**Conservation Status**

Pursuant to section 4(a) of the Act, we may list a species or subspecies of fish or wildlife or plants, or distinct population segment (DPS) of a vertebrate taxa, on the basis of any of the following five factors: (A) present or threatened destruction, modification, or curtailment of a species' habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. The petition asserts that yellow-billed loons are subject to threats primarily under Factors A, C, D, and E, above. We used information provided by the petitioners and available in our files to address the relationship of these factors to the yellow-billed loon and its habitats.

Certain intrinsic aspects of yellow-billed loon ecology and demography, including low and variable productivity, adult survival, and low population numbers, are important to consider when evaluating the species' status and its threats. Healthy populations of K-selected species, such as the yellow-billed loon, are characterized by low annual productivity rates balanced with high annual survival rates, meaning that individuals must live many years to replace themselves with offspring that survive to recruit into the breeding population. Low productivity means that depleted K-selected species have lower recovery potential and slower recovery rates following population declines than r-selected species, which are characterized by high annual productivity. Factors that reduce productivity, including loss of productive breeding habitats, reduction in prey populations, or increases in nest predators, may further constrain a K-selected species' recovery. Further, most arctic species are characterized by variable annual productivity, given the vagaries and severity of arctic weather, fluctuations in predator–prey relationships (e.g., reproductive success of many predators fluctuates with large annual variation in lemming abundance), and other aspects of arctic ecology. The population impact of threats that reduce productivity could be magnified if coincident with a rare year of otherwise high productivity.

Although factors that compromise productivity can cause populations to decline, adult survival may be the most important determinant of a K-selected species' population size and persistence (Smith and Smith 2001, p. 235). If adults are removed from the population prior to replacing themselves (i.e., adult survival is decreased), the population will decline. Perhaps most pertinent to a discussion of extinction, rare species—those with low numbers—are intrinsically closer to a threshold below which recovery is not possible (i.e., minimum viable population) (Hunter 1996, p. 137). Species can be rare because of restriction to a rare type of habitat, limitation to a small geographic range, or occurrence at low densities (Hunter 1996, p. 129), all of which are true for yellow-billed loons. Because rare species are closer to extinction to begin with, potential threats become more urgent and imminent, even if we have not studied and therefore not documented their occurrence or effects.

*A. Present or Threatened Destruction, Modification, or Curtailment of a Species' Habitat or Range*

The petitioners assert that yellow-billed loon freshwater breeding habitats are threatened by oil, gas, and mineral development, and that marine wintering and migrating habitats are threatened by degradation of the marine environment. Disturbance from human presence and noise from construction and aerial traffic, changes in freshwater chemistry or pollutant loads, and changes in freshwater hydrology associated with oil and gas development are addressed by the petitioners under Factor E, but warrant discussion under Factor A because they are potential mechanisms

for rendering breeding habitats unsuitable. (Additional impacts associated with development on the breeding grounds, such as increased predation, are discussed under Factors C and E.)

Discussion of disturbance, pollution, hydrologic alterations, and other impacts from development that may reduce the suitability of breeding habitats is relevant because much of the yellow-billed loon's limited, specific, and concentrated breeding habitat in Alaska is available for oil and gas leasing and development. Approximately three-quarters of the yellow-billed loons that nest in Alaska, and over 90 percent of those that nest on Alaska's North Slope, occur within the 9.5-million-ha (23.5-million-ac) National Petroleum Reserve–Alaska Plan (NPR–A), and information available in our files indicates that some of the highest-density yellow-billed loon breeding areas overlap with areas of high economic oil potential. The petitioners cite National Environmental Policy Act (NEPA) planning documents for oil and gas leasing and exploration in NPR–A to support their assertion that oil and gas exploration and development will occur. The BLM has conducted four lease sales in the NPR–A since 1999. In the Northeast Planning Area, sales held in May 1999 and June 2002 resulted in leases covering 404,685 ha (1.45 million ac) (*http://www.blm.gov/ak/ak940/fluids/boe_npra_index.html*, accessed March 30, 2007), on which 21 exploration wells were drilled from 2000 to 2007 (*http://www.blm.gov/ak/ak940/fluids/boe_explrtn_actvty.html*, accessed March 30, 2007). In the Northwest Planning Area, sales held in June 2004 and September 2006 resulted in leases covering 809,371 ha (2.34 million ac), on which 3 exploration wells were drilled in 2006 and 2007 (*http://www.blm.gov/ak/ak940/fluids/boe_explrtn_actvty.html*, accessed March 30, 2007). If exploration drilling results in discovery of a commercially viable field, ''* * * it typically takes an additional 4 to 10 years for further study, design, and installation of facilities before production can begin.'' (USDOI–BLM 2006, p. 2–6). Because most of yellow-billed loon breeding habitats are in NPR–A, and because approximately half of the high-density breeding areas overlap with leased areas that have high potential for economically recoverable oil, the likelihood of threats from oil and gas development to the species occurring within the next ten years is high.

The petitioners assert that loons as a genus are extremely susceptible to disturbance, and information in our files suggests that yellow-billed loons may be very sensitive to human presence (North 1994, p. 16). Disturbance can cause yellow-billed loons to abandon reproductive efforts or leave eggs or chicks unattended and exposed to predators or bad weather. A yellow-billed loon's normal behavior can be interrupted at a distance of up to 1.6 kilometers (1 mile) from humans, although these behavioral changes can vary by individual and circumstance (Earnst 2004b, p. 1). When undisturbed, yellow-billed loons rarely leave eggs or chicks, and they effectively defend both from aerial predators (Earnst 2004b, p. 1). Further, although information available in our files suggests displaced common loons may successfully breed in alternative sites (e.g., common loons not accustomed to human activity have relocated breeding activities in response to human presence) (numerous studies cited in Evers 2004, p. 35), alternative suitable breeding sites are likely not available for yellow-billed loons, as evidenced by inter- and intra-specific competition for nesting and brood-rearing lakes of suitable size and depth, and the species' philopatric behavior (North 1994, p. 16).

The petitioners assert that oil spills and other chemical contamination that would occur with oil and gas development will also impact loons, citing information on oil toxicity and prevalence of oil spills on Alaska's North Slope. Information in our files suggests that changes in freshwater chemistry or pollutant loads, including oil spills, associated with oil and gas development may render breeding habitats unsuitable, and both have been documented on Alaska's North Slope (NRC 2003, p. 6–7, 73–74). Yellow-billed loons, like other aquatic-dependent birds, are susceptible to oiling in the event of a spill. Severe effects are expected to result for birds contacted by oil spills in NPR–A (USDOI–BLM 2005, p. 4–105). Further, oil spills may have long-term effects on tundra waters by killing prey and vegetation (USDOI–BLM 2005, p. 4–78, 4–88), thereby reducing food availability and cover. Oil spills in arctic marine habitats may also affect juvenile and non-breeding yellow-billed loons (USDOI–BLM 2005, p. 4–105). The majority of spills that have occurred in association with oil and gas development on Alaska's North Slope are relatively small and cause minimal impacts to surrounding habitats or wildlife. The risks from larger and potentially more frequent spills need to be examined however.

The petitioners assert that water depletion or drawdown may affect connectedness, depth, or melt date of yellow-billed loon nesting or brood-rearing lakes and may render such areas unsuitable as breeding habitats. Information in our files indicates that industrial development on the North Slope has affected freshwater flow and drainage as a result of water withdrawals to build ice roads or drilling pads, and through permafrost decay consequent to infrastructure placement, vegetation damage, or fluid extraction and injection (NRC 2003, p. 1–11). North (1994, p. 16) and North and Ryan (1989, p. 303) suggested that permafrost decay consequent to infrastructure placement and disturbance of vegetation may cause breaching of rivers into yellow-billed loon breeding lakes, rendering them unsuitable due to fluctuating water levels (causing drowned nests) or increased turbidity (negatively affecting foraging success). Additionally, the petitioners assert and we concur that ice roads on breeding lakes may compact lake ice and delay melting (USDOI–BLM 1998, p. IV–3–b–1–b), thus delaying or discouraging yellow-billed loon breeding.

Water withdrawals used for ice roads and pads could have additional effects on habitat suitability by affecting fish populations that breeding yellow-billed loons depend upon to feed themselves and young. Although water withdrawal stipulations in oil and gas planning documents are designed to protect and monitor fish-bearing lakes, their adequacy for protecting fish that serve as yellow-billed loon prey is not currently known. The Service is working with the BLM and others to evaluate these and other accommodations that are either in place or are proposed for the protection of this species.

Areas within the yellow-billed loon's arctic breeding range in Russia and Canada may face similar developmental pressures. The petitioners assert that mineral and oil development in Russia is either unregulated or regulations are not enforced, resulting in long-term environmental impacts. In Canada, oil and gas developments within the yellow-billed loon's breeding and staging areas have been proposed. If it occurs, overlap of development (particularly unregulated development) with the specific and limited breeding areas required by yellow-billed loons will result in destruction, modification, or curtailment of habitats or range in Russia and Canada. Further, the Service and the petitioners are unaware of assessment or monitoring data to

evaluate these effects on yellow-billed loons in Eurasia (including Russia).

There is little documentation of the degradation of marine habitats resulting in destruction or modification of yellow-billed loon habitat. However, the marine environment is clearly important for yellow-billed loons, as that is where they spend their first three years, and subsequently at least eight months per year. Particular examples of marine degradation listed by the petitioners include pollution (although oil and chemical spills are discussed under Factor E), and the effects of fishing practices such as drowning in fishing nets and depletion of the prey base through overfishing or other destructive fishing practices. The negative effects of these examples are likely to be on individual condition or survival; high survival rates, especially of breeding adults, are required for yellow-billed loon population maintenance.

Information available in our files indicates that the Yellow Sea, where all 11 Alaska-breeding yellow-billed loons with satellite transmitters wintered (Schmutz 2004, p. 1), is being degraded. There are approximately six million humans in surrounding watersheds, and the Yellow Sea is impacted by loss of wetland habitat, depleted fisheries, and industrial, agricultural, and domestic pollution (*http://www.gefonline.org/projectDetails.cfm?projID=790*), accessed January 17, 2006). The Australian Government, in a summary of the Yellow Sea's importance to shorebirds, noted that declining river flows, pollution, and unsustainable harvesting of benthic fauna are leading to reduced benthic productivity and food declines for shorebirds (*http://www.deh.gov.au/biodiversity/migratory/waterbirds/yellow-sea/*, accessed January 17, 2006). These impacts on the aquatic system would also affect wintering loon food availability, potentially reducing individual fitness prior to spring migration and breeding.

We find the petition provided substantial information to support its assertions that the threat of past, current and probable future destruction, modification, or curtailment of yellow-billed loon habitat is sufficient to warrant additional review of the species' status. In freshwater breeding areas, factors associated with oil and gas exploration and development (*i.e.*, disturbance, pollution, and hydrologic changes) can make breeding habitats unsuitable. Marine habitats, where yellow-billed loons spend much of the year, are being degraded through overfishing and pollution.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petitioners assert that overutilization for commercial, recreational, or educational purposes is unlikely. Although the petitioners list research-related nest disturbance under this Factor, they also state that it is likely to be a minor Factor affecting the species and that the benefits of such research outweigh any adverse effects.

*C. Disease or Predation*

The petitioners assert that yellow-billed loons may be subjected to increased nest predation if infrastructure associated with resource development occurs in their breeding areas. Increasing numbers of ravens, gulls, and arctic foxes, some of which are documented predators of yellow-billed loon nests or young (North 1994, p. 11), have been associated with oil field infrastructure development and human-generated food sources on the North Slope of Alaska (NRC 2003, p. 6). When combined with increased predation opportunities resulting from disturbance (discussed under Factor A), the effect of increased predator numbers could be amplified. The petitioners assert that disease does not appear to be a risk to yellow-billed loons. However, since receiving the petition the highly pathogenic avian influenza has been documented in Asia where yellow-billed loons winter.

We find the petition provided substantial information to support its assertions that the threat of increased predation associated with resource development infrastructure is sufficient to warrant additional review of the species' status. Additionally, the potential impacts of avian influenza on the loon are not know at this time and may warrant further investigation.

*D. Inadequacy of Existing Regulatory Mechanisms*

The petitioners assert that the yellow-billed loon is not protected or is inadequately protected by existing regulations, including international conventions or agreements against threats such as development and hunting. The yellow-billed loon is not currently listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The species is listed under the United Nations Environment Program Convention on the Conservation of Migratory Species of Wild Animals (UNEP-CMS), yet the United States, Russia, Canada, and most Asian nations are not signatories (*http://www.cms.int/*, accessed January 17, 2006). Although it is listed in the Russian Red Data book, and the species and its habitat are nominally protected under the U.S. Migratory Bird Treaty with the former Soviet Union (P.L. 95–616), the petitioners assert that current economic and social conditions in Russia limit the implementation and enforcement of these regulations. In Canada, the yellow-billed loon is protected under the Migratory Birds Convention Act, but subsistence hunting is allowed and is not regulated or tracked. In Canada, the yellow-billed loon is not listed on Schedule 1 (i.e., specified as ''at risk'') of the Species at Risk Act of 2002, legislation similar to the Act. Currently, the species is not covered under Canadian Provincial laws or regulations and, thus, receives no protections or conservation considerations in Canada.

Within the United States, the yellow-billed loon has protection under several laws and regulations, but the petitioners assert that these are inadequate given the vulnerabilities of, and the specific threats facing, the species and its habitat. The Migratory Bird Treaty Act (MBTA) makes it unlawful to kill or take eggs or nests of yellow-billed loons, but does not provide protection for habitats, a primary concern in relation to development in breeding areas. Yellow-billed loons are not open for subsistence hunting in Alaska under migratory bird spring subsistence harvest regulations (69 FR 17318–17329). The Service and State of Alaska have recognized the yellow-billed loon as a potentially vulnerable species under the Birds of Conservation Concern (68 FR 6179) and State Comprehensive Wildlife Conservation Strategy (*http://www.sf.adfg.state.ak.us/statewide/ngplan/*, accessed January 17, 2006), respectively. These designations provide management and research funding prioritization.

The BLM has adopted stipulations and required operating procedures for the NW and NE NPR–A (USDOI–BLM 2004, p. 2–22–23; USDOI–BLM 2005, p. 2–2–45) in order to minimize potential impacts to yellow-billed loons, such as disturbance of nesting birds and broods. These include water withdrawal standards for deep fish-bearing lakes (discussed under Factor A) and setbacks for exploratory drilling and permanent facilities near fish-bearing and deep lakes (greater than 3.9 m (13 ft) deep). While exceptions may be authorized for all stipulations and required operating procedures, the stipulations and required operating procedures were proposed to minimize impacts, including disturbance, to yellow-billed loons within BLM-managed areas. At

this time, however, data are not available to determine how effective the stipulations and required operating procedures will be in minimizing or eliminating adverse impacts to the species. Further, the petitioners assert that some information is not provided or is erroneous and leads to unsupported conclusions about probability or magnitude of potential impacts. They note, for example, in the 1998 NE NPR–A Environmental Impact Statement (EIS), that vehicle travel was encouraged to occur more than 30 m (100 ft) from streams or lakes bearing overwintering fish, a stipulation not included in the 2005 NE NPR–A Final Amended EIS (USDOI–BLM 2005) or in the NW NPR–A Record of Decision (ROD)(USDOI–BLM 2004). While the rationale for removal of the stipulation was that travel on lakes is limited to specified areas (water pumping stations and ice roads), thus reducing ice and snow compaction, there are other reasons for restricting travel near fish-bearing water bodies, including reducing contamination from spills or ice-road maintenance activities. The petitioners also claim that the Final EIS for the Minerals Management Service's (MMS) 1996 Beaufort Sea Planning Area Oil and Gas Lease Sale 144 fails to acknowledge documented use of marine foraging areas on the North Slope (USDOI–MMS 1996, p. IV–B–21). The Service is working with BLM and others to thoroughly review the biological needs of the yellow-billed loon, evaluate the conservation measures proposed by BLM to conserve this species, and identify any other measures that would help to avoid and minimize impacts to the species in its range within NPR–A.

We find the petition provided substantial information to support its assertions that the yellow-billed loon's habitat is not currently protected by existing regulatory mechanisms in the U.S. and Canada.

*E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

The petitioners assert that other natural or manmade factors may threaten yellow-billed loons. These factors include small population size and low productivity; vulnerability to oil spills and other contaminants; water depletion associated with oil and gas development; incidental bycatch in commercial or subsistence fishing nets; and hunting. Increased predation, disturbance, and water withdrawals associated with oil and gas development, and marine pollution, were discussed under Factors A and C.

As previously discussed, small population size, low and variable productivity, and dependence upon high adult survival are all ecological characteristics of yellow-billed loons, a K-selected species. These characteristics mean that the yellow-billed loon is inherently more vulnerable to perturbations that impact their survival and reproductive success because their population would take longer to recover from declines than a more common or fecund species. Additionally, many of the factors discussed under Factor E may affect adult survival, which may be more important to population maintenance in these long-lived birds than annual productivity (Smith and Smith 2001, p. 235). K-selected species like the yellow-billed loon also tend to be specialists, efficiently using particular environments, but they are often at or near carrying capacity, resource-limited, poor colonizers, and generally do not do well in disturbed environments (Smith and Smith 2001, p. 235). They are also highly vulnerable to random environmental or anthropogenic events, such as the threats described below.

Yellow-billed loons, like other loons, are potentially vulnerable to oil and chemical spills throughout their range. Of the 30,000 bird carcasses recovered after the Exxon *Valdez* oil spill, approximately 1.5 percent (450) were loons (with an unknown percentage of yellow-billed loons; Piatt *et al.* 1990, p. 391). As recovered carcasses represent only a fraction of actual oil spill mortality (Wiens 1996, p. 596), yellow-billed loon loss may have been high relative to population size (Piatt *et al.* 1990, p. 395). Habitat alterations associated with oil, gas, and mineral development were addressed in Factor A, and although an oil spill may make habitats unsuitable, perhaps the effect of most concern is mortality. Because loons in general are so dependent upon the aquatic environment and spend so little time on land, they are particularly at risk for exposure during an oil spill. Oiled birds die primarily from hypothermia because oil coats their normally insulating and buoyant feathers, preventing efficient thermoregulation. They can also die from oil ingested during preening. Egg viability can be diminished through contact with even small amounts of oil on feathers of incubating adults (e.g., Harfenist *et al.* 1990, p. 902). Oil spills may also alter foraging habitats, acutely by killing large numbers of prey, or chronically by altering community structure via long-term exposure to oil or its components (e.g., Peterson *et al.* 1996, p. 2637). In migrating and wintering areas of the Pacific, current and future oil and gas development will only increase, such as in the Yellow Sea (*http://www.china.org.cn/english/7352.htm*), accessed January 17, 2006), or on Sakhalin Island, Russia.

Anecdotal data indicate that loons, including yellow-billed loons, may die as incidental bycatch in commercial and subsistence gill nets, although more data are needed to accurately quantify this threat. Service law enforcement agents have been told that yellow-billed loons are routinely and unavoidably caught in subsistence fishing nets on the Ikpikpuk River (Roberts 2004), and this presumably occurs on other North Slope rivers with gillnetting. Additionally, intensive commercial fishing, a likely source of bycatch mortality, occurs in yellow-billed loon wintering areas in Asia, particularly the Yellow Sea (Elvidge *et al.* 2001, Fig. 2).

Yellow-billed loons have also been hunted for subsistence purposes, especially for their feathers for use in traditional dance regalia. Hunting is not allowed under current spring subsistence hunting regulations in Alaska (i.e., they are not on the list of ''open'' species). Annual subsistence harvest surveys conducted in Alaska from 1990 to 1999 indicate a total estimated harvest of 98 yellow-billed loons (Wentworth and Wong 2001, p. 107). In Russia and Canada, traditional or subsistence use of yellow-billed loons is not regulated. Specifically, many subsistence species may be taken at higher rates in Russia than in Alaska, because of the relative lack of paying jobs, and yellow-billed loons are included as customary and traditional subsistence-use species on the 1996 protocol amending the 1916 Convention for the Protection of Migratory Birds between the United States and Canada (Letter of Submittal dated May 20, 1996, as cited in 70 FR 55691–55699).

We find the petition provided substantial information to support its assertions that the threats of other natural and manmade factors, including small population size, low productivity, vulnerability to spilled oil and other contaminants, water depletion associated with resource development, incidental bycatch, and hunting , are sufficient to warrant additional review of the species' status.

**Finding**

We have reviewed the petition and supporting information. We have found:

(1) On April 5, 2004, we received a petition from the Center for Biological Diversity and others to list the yellow-billed loon as endangered or threatened

throughout its range or as a Distinct Population Segment and to designate critical habitat. The petition describes multiple threats to the yellow-billed loon, including destruction or modification of habitats due to development and pollution, lack of regulatory protection, and other factors such as mortality from drowning in fishing nets and hunting. The petition emphasized that certain other factors, including limited and specific breeding habitats, a small global population, and low reproductive rate, make yellow-billed loons more susceptible to the threats identified in the petition and less likely to recover after declines. The petitioners assert that yellow-billed loon freshwater breeding habitats are threatened by oil, gas, and mineral development, and that marine wintering and migrating habitats are threatened by degradation of the marine environment.

(2) Yellow-billed loons breed in remote circumpolar areas, generally above the Arctic Circle, with harsh climates and low human population densities. Yellow-billed loons nest exclusively in coastal and inland low-lying tundra from 62 to 74° N latitude, in association with permanent, fish-bearing lakes in Alaska, Canada, Russia, and rarely in far northern Norway and Finland. Populations are thought to be limited primarily by availability of breeding habitat, specifically nesting and brood-rearing lakes.

(3) Our knowledge of the status of the yellow-billed loon is far from complete, but the worldwide population is believed to be relatively small. The only known comprehensive yellow-billed loon population estimates are from Alaska. The total Alaska yellow-billed loon population may be 3,700 to 4,900. The Service is unaware of scientifically valid population estimates for other areas. However, anecdotal density and habitat information have caused at least one scientist to speculate that 8,000 yellow-billed loons breed in Canada and 5,000 breed in Russia. Combining these estimates, the worldwide breeding-ground yellow-billed loon population may be roughly 16,500.

(4) Given the lack of comprehensive scientific information relative to yellow-billed loon population estimates, there are few means with which to assess population trends. In Alaska, the number of yellow-billed loons counted in surveys is small (resulting in wide confidence intervals around annual estimates). Although estimates over the last two decades do not show a change in the number of adults on the breeding grounds, the ability to statistically detect a significant change is relatively low. Thus, the Alaska breeding ground population could decline significantly before current survey methods would detect a declining trend. Other breeding areas are not surveyed at all.

(5) Yellow-billed loons have relatively low annual recruitment but relatively high annual adult survival, meaning that individuals must live many years to replace themselves with offspring that survive to recruit into the breeding population. Biologists identify species such as the yellow-billed loon as K-selected species, which are especially vulnerable to threats and are less likely to recover after declines.

(6) While comprehensive information on the biology of the yellow-billed loon is not complete, available scientific information and the professional judgment of knowledgeable biologists suggests that loons in general are relatively sensitive to human activity, and development and infrastructure located close to breeding lakes will affect the species and may cause reduced breeding success and declining populations. Flushing or other changes in normal nesting behavior can cause eggs or young to be vulnerable to cold and predation. Increased predation of eggs and chicks due to human disturbance has been documented in loons.

(7) Approximately 75 percent of the yellow-billed loons that nest in Alaska are found within the NPR–A (25 percent in NE NPR–A and 50 percent in NW NPR–A), which is managed by BLM. Of the 1.9 million ha (4.6 million ac) in NE NPR–A, a 1998 Record of Decision (ROD) made 87 percent available for oil and gas leasing. In June 2004, the BLM released a draft amended EIS that may allow an increase in the area available for leasing to 95 percent of the unit. In the 3.6 million ha (8.8 million ac) of NW NPR–A, a January 2004 ROD made all BLM-administered lands available for leasing. The EIS process for the 4.1 million-ha (10.1 million-ac) S NPR–A has begun. In summary, much of the higher density loon breeding area lies within the area identified as having high potential for oil development and exploration and development has begun in certain areas and will likely begin in others soon (i.e., within the next ten years).

(8) As exploration and development occurs in the NPR–A, the potential for disturbance, pollution, hydrologic alterations, and other impacts on the yellow-billed loon and its limited, specific, and concentrated breeding habitat will need to be addressed. Additionally, increased predator numbers are often associated with industrial development in Arctic areas and could adversely impact nesting success without careful planning and management.

(9) Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. Our standard for substantial scientific information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). When a substantial finding is made, we are required to promptly begin a thorough review of the status of the species, if one has not already been initiated.

We have determined that the information in the petition would lead a reasonable person to believe that the measure proposed by the petition may be warranted. Therefore, we find that the petition presents substantial information indicating that listing the yellow-billed loon may be warranted. While we note the lack of documented scientific information on the effects of threats to yellow-billed loons, the yellow-billed loon is restricted in its breeding habitat and, in Alaska, it breeds primarily within a geographic area that has significant development potential. Therefore, the responsible course of action is to review in detail the threats and vulnerabilities listed in the petition and to thoroughly review the scientific literature and other information to determine if listing the species is warranted. To do otherwise could subject the species to significant risks from which it may have difficulty recovering. We have also developed, together with the BLM and other agencies, a Conservation Agreement that addresses a subset of threats to the loon in a portion of the species' range. The strategies for conservation in the Agreement include: Implement specific actions to protect yellow-billed loons and their breeding habitats in Alaska from potential impacts of land uses and management activities, including oil and gas exploration and development; inventory and monitor yellow-billed loons breeding populations in Alaska; determine and reduce, if significant, the impact of subsistence activities on yellow-billed loons (including subsistence fisheries and hunting) in Alaska; and conduct biological research on yellow-billed loons, including response to management actions. We invite comments on management strategies and research needs that

should be considered during scheduled annual reviews of the Conservation Agreement.

Following completion of the status review, we will evaluate whether the species or a Distinct Population Segment warrant listing as endangered or threatened. The petitioners also requested that critical habitat be designated for this species. We always consider the need for critical habitat designation when listing species. If we determine in our 12-month finding that listing the yellow-billed loon is warranted, we will address the designation of critical habitat at the time of the proposed rulemaking.

### References Cited

A complete list of all references cited herein is available upon request from the Fairbanks Fish and Wildlife Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

### Author

The primary author of this document is Dr. Angela Matz, Fairbanks Fish and Wildlife Field Office, U.S. Fish and Wildlife Service, Fairbanks, Alaska.

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: May 11, 2007.

**Kenneth Stansell,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. E7–10823 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Utah (Desert) Valvata Snail (Valvata utahensis) from the List of Endangered and Threatened Wildlife

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the Utah (desert) valvata snail (*Valvata utahensis*) from the Federal List of Endangered and Threatened Wildlife (List) pursuant to the Endangered Species Act (Act). We find that the petition presents substantial scientific information that delisting the Utah valvata snail may be warranted, and are initiating a status review. We plan to conduct this review concurrent with the ongoing status review initiated on April 11, 2006 (71 FR 18345), which we are required to make every 5 years under section 4(c)(2)(A) of the Act. We are requesting submission of any new information on the Utah valvata snail since its original listing as an endangered species in 1992. At the conclusion of these simultaneous reviews, we will make the requisite recommendation under section 4(c)(2)(B) of the Act and will issue a 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

**DATES:** The finding announced in this document was made on June 6, 2007. To be considered in the 12-month finding on this petition or the 5-year review, comments and information must be submitted to us by September 4, 2007.

**ADDRESSES:** You may submit new information, materials, comments, or questions concerning this species by any one of the following methods:

1. You may submit comments and information to the Field Supervisor, Attention: Utah Valvata Snail Comments, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, ID 83709.

2. You may hand-deliver written comments and information to the above address.

3. You may fax your comments to 208–378–5262.

4. You may go to the Federal rulemaking Internet portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

5. You may e-mail your comments to *fw1srbocomment@fws.gov.*

Please include ''Utah Valvata Snail Comments'' in the subject line for faxes and e-mails. Please submit electronic comments in unformatted text, and avoid the use of special characters and encryption.

**FOR FURTHER INFORMATION CONTACT:** Susan Burch, Fish and Wildlife Biologist, Snake River Fish and Wildlife Office (see **ADDRESSES**); telephone: 208–378–5243; or e-mail: *susan_burch@fws.gov.*

**SUPPLEMENTARY INFORMATION:**

### Public Information Solicited

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting any additional information, comments, or suggestions on the Utah valvata snail from the public, State and Federal agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties. Information sought includes any data regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species or its habitat, and threats to the species or its habitat. We also request information regarding the adequacy of existing regulatory mechanisms.

Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*).

If you wish to comment or provide information, you may submit your comments and materials concerning this finding to the Field Supervisor (see **ADDRESSES**) by the date listed in the **DATES** section.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section.

### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted.

The finding is based on information contained in the petition and information otherwise available in our files at the time we make the finding. To the maximum extent practicable, we are to make the finding within 90 days of receiving the petition, and publish our notice of the finding in the **Federal Register**.

This finding summarizes the information included in the petition and information available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations in 50 CFR 424.14(b), our review of a 90-day finding is limited to a determination of whether the information in the petition meets the ''substantial scientific or commercial information'' threshold. Our standard for substantial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a review of the status of the species and publish the results of that status review in a 12-month finding.

**Species Information**

The Utah valvata snail is a habitat generalist, occupying coldwater springs, spring creeks, the mainstem Snake River, and reservoirs in both fine sediments and more coarse substrates at a variety of water depths (Hinson 2006, pp. 30–33). Utah valvata snails have been documented in discontinuous colonies along a 260-mile stretch of the Snake River in southern and eastern Idaho from Upper Salmon Falls Dam in southern Idaho (River Mile (RM) 581.3) upstream to the State Highway 33 Bridge on the Henry's Fork in eastern Idaho (Hinson 2006, p. 15). Colonies are also known to exist in Snake River tributaries (*e.g.*, the Big Wood River and Box Canyon Creek) and in coldwater springs adjacent to the Snake River (*e.g.*, Thousand Springs Preserve) (reviewed by Hinson 2006, p. 15).

The Utah valvata snail is univoltine, meaning it has a 1-year life cycle. Emergence of new cohorts of the Utah valvata snails occurs throughout the year, depending on habitat (Frest and Johannes 1992, p. 15; U.S. Bureau of Reclamation (USBR) 2002, pp. 6–7; USBR 2003, pp. 9–12; Lysne 2003, p. 93), and is followed by rapid growth through the summer and fall. Over winter, snails become dormant (Cleland 1954, p. 170; Lysne 2003, p. 83, USBR 2003, pp. 9–12). Following the cessation of dormancy in spring, growth continues through summer until sexual maturity is reached at 4 to 5 millimeters (mm) of length (Hershey 1990, p. 29; Lysne and Koetsier 2006, p. 287). Reproduction and spawning occur asynchronously between March and October, depending on habitat, with the majority of young spawned between August and October (Cleland 1954, p. 172; USBR 2003, p. 9). Emergence of a new cohort follows approximately two weeks after oviposition (Cleland 1954, p. 170; Heard 1963, p. 66; Dillon 2000, p. 103) and senescent snails (*i.e.*, those approximately 1 year old) die shortly after reproduction (Cleland 1954, pp. 170–171; Lysne and Koetsier 2006, p. 287).

We listed the Utah valvata snail as endangered on December 14, 1992 (57 FR 59244). At that time, we determined that the Utah valvata snail was threatened by construction of new hydropower dams, the operation of existing hydropower dams, degraded water quality, water diversions, the introduced New Zealand mudsnail (*Potamopyrgus antipodarum*), and the lack of existing regulatory protections (57 FR 59244). The Utah valvata snail was described as existing ''at a few springs and mainstem Snake River sites in the Hagerman Valley and at a few sites below American Falls Dam downstream to Burley [Idaho].'' We published the Snake River Aquatic Species Recovery Plan, which included the Utah valvata snail, in 1995 (Service 1995). Critical habitat has not been designated for this species.

**Review of Petition**

On December 26, 2006, we received a petition from the Governor of Idaho and attorneys for several irrigation districts and canal companies requesting that the Utah valvata snail be removed from the List. The delisting petition cites a recent status review conducted by Steward & Associates (Hinson 2006), a review of Utah valvata snail sampling methodology (D.R. Hinson and C. Steward (Steward & Associates), in litt. 2007), a memorandum addressing perceived threats to Utah valvata snail from 1996 to 2006 (Barker Rosholt & Simpson LLP, in litt. 2006), the Mid-Snake Springs Habitat Protection Plan (Wilkison 2005), species data from the Thousand Springs Preserve (Idaho Power 2006, unpublished data), water quality data from Idaho Department of Environmental Quality (IDEQ 2007), and U.S. Bureau of Reclamation data for the Utah valvata snail (USBR 2002, 2003, 2005). The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). The petition cited information on the natural history of the Utah valvata snail, its population status, and advances in knowledge about the species' ecology and threats since listing. The petition states that many of the threats identified in the 1992 listing rule no longer exist or have been attenuated by subsequent actions. It also states that the Utah valvata snail is more abundant, is more continuously distributed, and exists in more diverse habitats than previously recorded.

**Threats Analysis**

The factors for listing, delisting, or reclassifying a species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, and/or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. In making this 90-day finding, we evaluated whether information presented in the December 2006 petition, when considered along with information in our files, constitutes substantial scientific or commercial information such that delisting may be warranted. Our evaluation of this information is presented below.

*A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Habitat Use

The petitioners claim that Utah valvata snails are able to live in a variety of habitats previously thought to be unsuitable for the species, including reservoirs. They provided a status report by Hinson (2006) as the primary source of information to support this claim. Hinson (2006, p. 21) used available data from the Bureau of Reclamation, Idaho Power Company, Hinson & Falter, the Idaho Department of Fish and Game, the Service, and the Idaho Transportation Department to analyze the current distribution of Utah valvata snails related to habitat features (i.e., depth

and dominant substrate size). Based on this analysis, Hinson (2006, pp. 3, 23–32) reported Utah valvata snails using a number of substrates (fines, cobbles, gravel), habitat types (river, springs, reservoirs), depths (from less than 1.6 feet (ft) (0.5 meter (m)) to greater than 32.8 ft (10 m)), and water temperatures (from 40.1 degrees Fahrenheit (°F) (4.5 degrees Celsius (°C)) to 66.6 °F (19.2 °C)). The snails have also been found in areas of low and high concentrations of aquatic plants, and, in one case, were found in very fine, black, organically enriched sediments with dense submerged aquatic plant communities and attached filamentous (long thread-like) algae (Hinson 2006, pp. 30–33).

At the time of listing, we stated: ''In the Snake River, *V. utahensis* lives in deep pools adjacent to rapids or in perennial flowing waters associated with large spring complexes. The species avoids areas with heavy currents or rapids. The snail prefers well-oxygenated areas of non-reducing calcareous mud or mud-sand substrate among beds of submergent aquatic vegetation. The species is absent from pure gravel-boulder bottoms'' (57 FR 59244, p. 59245).

We accept the petitioners' characterization of Utah valvata snail habitat use and find that they have presented substantial information suggesting that current information about Utah valvata snail habitat use may be different than indicated by the best available information at the time of listing in 1992.

Range

Based primarily on a status report by Hinson (2006), the petitioners claim that the species is more widely distributed than recorded at the time of listing in 1992. Hinson (2006, p. 15) reported that Utah valvata snails occupy discontinuous colonies in a 260-mile (418-kilometer) range in the Snake River Basin from Upper Salmon Falls Dam (RM 581.3) upstream to the State Highway 33 bridge on the Henry's Fork. Colonies are also known to exist in habitats adjacent to mainstem Snake River habitats, including the Big Wood River (joins the Snake River at RM 571), Box Canyon Creek (joins the Snake River at RM 588), and Thousand Springs Preserve (joins the Snake River at RM 585) (reviewed by Hinson 2006, p. 15). Based on a collection of empty shells of recent origin, colonies may also exist in Magic Reservoir, upstream of the Big Wood River colony (J. Keebaugh, Orma J. Smith Museum of Natural History, pers. comm. 2006, cited in Hinson 2006, p. 15). At present, the most abundant colonies of Utah valvata snails known to exist in the Snake River Basin occur in river and reservoir habitats from Minidoka Dam (RM 675) upstream to the middle portion of American Falls Reservoir (approximately RM 725) (reviewed by Hinson 2006, p. 15).

At the time of listing, we stated: ''The Utah valvata snail historically occurred from river mile 492 (near Grandview) to river mile 585 just above Thousand Springs with a disjunct population in the American Falls Dam tailwater near Eagle Rock damsite at river mile 709. The taxa was known historically from northern Utah, although recent mollusk surveys throughout the State revealed no live sites and the species is believed extirpated there (Clarke 1991). At present, this species occurs in a few springs and mainstem Snake River sites in the Hagerman Valley and a few sites below American Falls Dam downstream to Burley (Beak 1987; Taylor 1987)'' (57 FR 59245).

We accept the petitioners' characterization of the Utah valvata snail's current range and find that they have presented substantial information indicating that the current range of the Utah valvata snail may be significantly larger than the range we described in our 1992 listing rule.

Construction of New Hydropower Dams

The petition states that threats to Utah valvata snail habitat from future hydropower development are not as they were perceived when the species was listed in 1992. The petitioners provided a document from the State of Idaho (Idaho 2006), indicating that all recent permits for the construction of new dams along the Mid-Snake River have either lapsed or have been denied by the Federal Energy Regulatory Commission (FERC). They also provided the following documents as evidence that specific permits are no longer moving forward: (1) A 2002 notice of surrender of preliminary permit for the River Side Project (FERC 2002a), (2) 2002 orders denying application for preliminary permits for the Eagle Rock (FERC 2002b) and Star Falls Hydroelectric Projects (FERC 2002c), and (3) a 2003 notice of surrender of preliminary permit for the Auger Falls Project (FERC 2003).

At the time of listing, there were six active proposals for new hydroelectric projects in the middle-Snake River. In our listing rule, we stated: ''Six proposed hydroelectric projects, including two high dam facilities, would alter free flowing river reaches within the existing range of [the Utah valvata snail]. Dam construction threatens the [Utah valvata snail] through direct habitat modification and moderates the Snake River's ability to assimilate point and non-point pollution. Further hydroelectric development along the Snake River would inundate existing mollusk habitats through impoundment, reduce critical shallow, littoral shoreline habitats in tailwater areas due to operating water fluctuations, elevate water temperatures, reduce dissolved oxygen levels in impounded sediments, and further fragment remaining mainstem populations or colonies of these snails'' (57 FR 59251).

We have no information in our files suggesting that future hydropower development in the middle-Snake River is likely to occur and we therefore accept the petitioners' claim that the threats from hydropower development may have dissipated since the time of listing.

Water Quality

A threats analysis provided by the petitioners states that threats to Utah valvata snail habitat from water pollution are not as they were perceived when the species was listed in 1992 (Barker et al. 2006, in litt., p. 10). The petitioners presented data on improvements to Snake River water quality and on changes in our understanding of Utah valvata snail's tolerance of nutrient-rich (e.g., nitrogen and phosphorus) water in the Snake River resulting from return flows from irrigated agriculture, runoff from feedlots and dairies, hatchery effluent, municipal sewage effluent, and other point and non-point discharges. The Utah valvata snail status report provided by the petitioners (Hinson 2006, p. 19) noted that the U.S. Bureau of Reclamation (2003) conducted studies measuring the organic content in the sediment (ash-free dry weight) where Utah valvata snails are found in an attempt to create an index that relates snail densities with available forage. The highest Utah valvata snail densities sampled coincided with lower Lake Walcott reservoir habitat that had the greatest percentage of organic content in the sediments, suggesting that Utah valvata snails can reach their greatest densities in areas that are subject to high concentrations of nitrogen and phosphorus (Hinson 2006, p. 19).

At the time of listing, we stated: ''The quality of water in [snail] habitats has a direct effect on the species survival. The [Utah valvata snail] require[s] cold, well-oxygenated unpolluted water for survival. Any factor that leads to a deterioration in water quality would likely extirpate [the Utah valvata snail]'' (57 FR 59244, p. 59252).

Therefore, we find that the petitioners have presented substantial information

indicating that Utah valvata snails may be more tolerant of nutrient-rich waters than indicated by the best available information at the time of listing in 1992.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

The petitioners did not provide information regarding the overutilization of Utah valvata snails for commercial, recreational, scientific, or educational purposes. We did not consider this factor applicable to our listing decision in 1992, and we do not have information in our files suggesting that overutilization is a threat to the species.

*C. Disease or Predation*

The petitioners did not provide information regarding the effects of disease or predation on Utah valvata snails. At the time of listing we stated that changes in the fish fauna of the middle Snake River had been suggested as a potential threat to the Utah valvata snail (57 FR 59244, p. 59253). At that time there was no data to support this suggestion, and we did not consider this factor to be significant in our listing decision. Currently, we have no information in our files suggesting that disease or predation are significant threats to the Utah valvata snail.

*D. The Inadequacy of Existing Regulatory Mechanisms*

The petitioners provided numerous documents regarding surface water quality programs, water rights, aquifer recharge, and groundwater management in the Snake River and Snake River Plain aquifer (e.g., Idaho 2004; Idaho 2005; IDWR 2006). These documents indicate that the State of Idaho has regulatory mechanisms to limit or exclude the development of new surface water or groundwater rights within the range of the Utah valvata snail. These documents also indicate that the State has regulatory mechanisms to prioritize existing water rights based on seniority.

At the time of listing, we found inadequate regulatory mechanisms to be a threat because (1) regulations were inadequate to curb further water withdrawal from groundwater spring outflows or tributary spring streams, (2) it was unlikely that pollution control regulations would reverse the trend in nutrient loading in the near future, (3) there was a lack of protections for invertebrate species in Idaho, and (4) regulations did not require FERC or the U.S. Army Corp of Engineers to address Service concerns regarding licensing hydroelectric projects or permitting projects under the Clean Water Act for unlisted snails.

Information provided by the petitioner, along with information in our files, suggests that the threat to Utah valvata snails from inadequate regulatory mechanisms may be less than indicated by the best available information at the time of listing. There are now regulatory mechanisms to limit future surface water and groundwater development, and some pollution control regulations have been implemented.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The status report provided by the petitioner (Hinson 2006) states that threats to the Utah valvata snail from the New Zealand mudsnail (*Potamopyrgus antipodarum*) are not as they were perceived when the species was listed in 1992. According to Hinson (2006, pp. 41–42), the fact that Utah valvata snails and New Zealand mudsnails frequently occur in the same samples indicates that these two species are able to co-exist, which either indicates that resources are not limiting or that the snails actually have slightly different algae preferences.

However, Hinson (2006, p. 41) also notes that the overlap in habitat utilization between the Utah valvata snail and the New Zealand mudsnail could lead to direct competition for resources between these two species. Hinson (2006, p. 41) states: ''*P. antipodarum* densities have been steadily increasing in reservoir habitats of the Snake River (e.g., Lake Walcott) (USBOR 2003; USBOR 2004a). This overlap in habitat utilization between *V. utahensis* and *P. antipodarum* could lead to direct competition for resources between these two species. Known densities of the exotic *P. antipodarum* in the Middle Snake River can exceed 800,000 individuals per square meter (Minshall 1993). This factor alone increases the likelihood that *V. utahensis* can be outcompeted by *P. antipodarum* and physically displaced in areas where the two species overlap. *P. antipodarum* populations in the Snake River Basin have been shown to reproduce rapidly and quickly deplete growths of periphytic algae (USFWS 2005), which is known to be an important food source for *V. utahensis* and many of the other listed Snake River snails.''

At the time of listing, we stated that New Zealand mudsnails were not abundant in coldwater springflows with colonies of the Utah valvata snail, but that they did compete with the Utah valvata snail in the mainstem Snake River (57 FR 59244, p. 59254). We have no direct evidence that New Zealand mudsnails have displaced colonies of Utah valvata snails, but New Zealand mudsnails have been documented in dense mats (at densities of nearly 400 individuals per square inch) in free-flowing habitats within the range of the Utah valvata snail (57 FR 59244, p. 59254). Furthermore, New Zealand mudsnails have become established in every spring-fed creek or tributary to the Snake River in the Hagerman Reach that has been surveyed.

Based on information provided by the petitioner, along with information in our files, New Zealand mudsnails likely compete with Utah valvata snails for food or space. Although the information provided by the petitioners indicates that the Utah valvata snail and New Zealand mudsnail co-occur in various locations, the petitioners acknowledge that, given the densities that New Zealand mudsnails can achieve, there is an increased likelihood that ''*V. utahensis* can be outcompeted by *P. antipodarum* and physically displaced in areas where the two species overlap.'' Therefore, we find that Hinson's (2006) analysis is largely consistent with our analysis at the time of listing in 1992, and that New Zealand mudsnails may still be a substantive threat to the Utah valvata snail.

**Finding**

We have reviewed the delisting petition and the supporting documents, as well as other information in our files. We find that the delisting petition and other information in our files presents substantial information indicating that delisting the Utah valvata snail may be warranted, and we are initiating a status review. Petitioners have provided a detailed status report that updates the state of knowledge regarding Utah valvata snail habitat use, distribution, and threats. The status report provides substantial information indicating that the Utah valvata snail may be more widely distributed than previously recorded and that it can occur in a wide variety of habitat types, substrates, depths, and water temperatures. Information provided by the petitioners also indicates that threats from hydropower development are not what we perceived when we listed the species in 1992, and that additional regulatory mechanisms now exist that could limit water development and improve water quality in Utah valvata snail habitat. New Zealand mudsnails appear to be a persistent threat to the Utah valvata snail, but the significance of this threat must be more fully evaluated in the context of the

remaining threats and the species' overall status.

**5-Year Review**

Section 4(c)(2)(A) of the Act requires that we conduct a status review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B), to determine whether any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. We initiated a 5-year review for the Utah valvata snail on April 11, 2006 (71 FR 18345). We are currently in the process of completing our 5-year review and will incorporate that review into our 12-month finding.

**References**

A complete list of all references cited in this finding is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this document is Jesse D'Elia, Pacific Regional Office, Portland, Oregon.

**Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2007.

**Randall B. Luthi,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. E7–10885 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Parts 21 and 22

**RINs 1018–AG11 and 1018–AT60**

## Migratory Bird Permits; Changes in the Regulations Governing Falconry and Raptor Propagation; Final Environmental Assessment on Take of Raptors From the Wild for Falconry and Raptor Propagation

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of a Final Environmental Assessment (FEA) evaluating the take of raptors from the wild for use in falconry and in raptor propagation, and a Finding of No Significant Impact (FONSI) for take of raptors for those purposes. We have prepared the FEA and the FONSI as part of the process we must follow to finalize two rules under the National Environmental Policy Act.

**ADDRESSES:** The documents are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, Virginia 22203–1610. They also are available on the Division of Migratory Bird Management Web pages at *http://migratorybirds.fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. George T. Allen, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, at 703–358–1714.

**SUPPLEMENTARY INFORMATION:** In the draft Environmental Assessment, we considered three alternatives for amending the falconry and raptor propagation regulations. In particular, at the request of the Association of Fish and Wildlife Agencies, we considered elimination of the federal/state falconry permitting system and replacing it with a state permitting system operating within a prescribed federal framework.

We received 313 electronic or written comment letters on the draft Environmental Assessment. We modified the Draft Environmental Assessment to respond to concerns expressed by agencies, organizations, and individuals.

Having reviewed the comments on the draft, our proposed action is to establish national take levels of concern for take of raptor species based on the published data for, and biology of, each species; to eliminate the federal permitting for falconry, but to leave the current captive propagation federal permitting program in place. Based on this assessment, I have signed the Finding of No Significant Impact for take of raptors from the wild for use in falconry and in raptor propagation.

Dated: May 25, 2007.

**Todd Willens,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E7–10909 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register
Vol. 72, No. 108
Wednesday, June 6, 2007

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Chief Economist; Membership on the Federal Advisory Committee for the Expert Review of Synthesis and Assessment Product 4.3

**AGENCY:** Office of the Chief Economist, U.S. Department of Agriculture.

**ACTION:** Notice of Advisory Committee Membership.

**SUMMARY:** Notice if hereby given of membership on the Federal Advisory Committee for the Expert Review of Synthesis and Assessment Product 4.3 (CERSAP). The U.S. Department of Agriculture (USDA) is the lead agency for Climate Change Science Program Synthesis and Assessment Product 4.3 (SAP 4.3) titled, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity.* CERSAP will provide advice to the Secretary of Agriculture on the conduct of this study. The members of CERSAP have been designated by Secretary Mike Johanns to provide advice regarding the conduct of SAP 4.3.

**DATES:** CERSAP members will serve until the suspension of the CERSAP charter, upon final publication of SAP 4.3.

**ADDRESSES:** Dr. William Hohenstein, Global Change Program Office, U.S. Department of Agriculture, 202–720–6698 or *whohenst@oce.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. William Hohenstein, Global Change Program Office, U.S. Department of Agriculture, 202–720–6698 or *whohenst@oce.usda.gov.*

**SUPPLEMENTARY INFORMATION:** CERSAP members and their affiliations are listed below:

J. Roy Black, PhD, Professor, Department of Agricultural Economics, Michigan State University.

David Breshears, PhD, Professor, School of Natural Resources, University of Arizona.

Glenn Guntenspergen, PhD, Scientist, U.S. Geological Survey.

Brian Helmuth, PhD, Associate Professor, Department of Biological Sciences, University of South Carolina.

Thomas Lovejoy, Ph.D. (CERSAP Chair), President, The H. John Heinz III Center for Science, Economics, and the Environment.

Frank Mitloehner, Ph.D., Air Quality Extension Specialist, Department of Animal Science, University of California, Davis.

Harold Mooney, Ph.D., Professor, Department of Biological Sciences, Stanford University.

Dennis Ojima, Ph.D., Senior Scholar, The H. John Heinz III Center for Science, Economics, and the Environment.

Charles Rice, Ph.D., Professor, Department of Agronomy, Kansas State University.

William Salas, Ph.D., President and Chief Scientist, Applied Geosolutions, LLC.

William Sommers, Ph.D., Research Faculty, Center for Earth Observing and Space Research, George Mason University.

Soroosh Sorooshian, Ph.D., Distinguished Professor, Department of Civil Engineering, University of California, Irvine.

Eugene Takle, Ph.D., Professor, Department of Geological and Atmospheric Science, Department of Agronomy, Iowa State University.

Carol Wessman, Ph.D., Professor, Cooperative Institute for Research in Environmental Sciences, Department of Ecology and Evolutionary Biology, University of Colorado.

CERSAP will provide expert peer review to SAP 4.3. CERSAP will generate a list of comments and suggestions to increase the merit of SAP 4.3. After SAP 4.3's authors have responded to those comments, CERSAP will review those responses to ensure that their review comments have been adequately considered and addressed. The duties of the CERSAP are solely advisory in nature.

**Keith Collins,**

*Chief Economist.*

[FR Doc. 07–2788 Filed 6–5–07; 8:45 am]

**BILLING CODE 3410–19–M**

## DEPARTMENT OF AGRICULTURE

### Office of the Chief Economist; Federal Advisory Committee for the Expert Review of Synthesis and Assessment Product 4.3

**AGENCY:** Office of the Chief Economist, U.S. Department of Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** The Federal Advisory Committee for the Expert Review of Synthesis and Assessment Product 4.3 (CERSAP) will be meeting in Washington, DC. The U.S. Department of Agriculture (USDA) is the lead agency for Climate Change Science Program Synthesis and Assessment Product 4.3 (SAP 4.3) titled, *The Effects of Climate Change on Agriculture, Land Resources, Water Resources, and Biodiversity*. CERSAP will provide advice to the Secretary of Agriculture on the conduct of this study.

**DATES:** CERSAP will convene at 8:30 a.m. on Tuesday June 19th through 3 p.m. on Wednesday, June 20th. Registration will begin at 8 a.m. on each day.

**ADDRESSES:** CERSAP will meet at the U.S. Department of Agriculture, 1400 Independence Avenue, Washington, DC 20250 in Room #4433. Upon entry, please have Security call 202–720–8651 for mandatory escort. Written materials for CERSAP's consideration prior to the meeting must be received by Dr. Margaret Walsh no later than Friday, June 8, 2007. Written materials may be sent to Dr. Walsh at *mwalsh@oce.usda.gov*.

**FOR FURTHER INFORMATION CONTACT:** Dr. Margaret Walsh, Global Change Program Office, U.S. Department of Agriculture, 202–720–9978 or *mwalsh@oce.usda.gov*.

**SUPPLEMENTARY INFORMATION:** This is a public meeting. Due to security and space constraints, individuals who would like to attend must RSVP to Dr. Margaret Walsh before Friday June 15, 2007 for access. Written materials for CERSAP's consideration prior to the meeting must be received by Dr. Margaret Walsh no later than Friday June 8, 2007. Individuals may make oral presentations. Those making oral presentations should register in person at the meeting site and must bring with them 25 copies of any materials they would like distributed. Photocopies cannot be made at the meeting site.

More information on CERSAP and on SAP 4.3 may be found online at *http://www.usda.gov/oce/global_change/index.htm*, *http://www.climatescience.gov/Library/sap/sap4-3/default.php*, and *http://www.sap43.ucar.edu/*.

**Draft Meeting Agenda**

*Tuesday June 19, 2007:*

A. Welcome and Introduction to CERSAP Procedures and Activities.
B. Introduction to SAP 4.3.
C. Discussion of SAP 4.3.
D. Public Comment.

*Wednesday June 20, 2007:*

A. Continued Discussion of SAP 4.3.
B. Discussion of Next Steps.
C. Public Comment.

Time will be reserved on each day of the meeting for public comment. Individual presentations will be limited to five minutes. Updates to the meeting agenda can be found online at the URLs listed above.

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Dr. Margaret Walsh. USDA prohibits discrimination on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (Braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

**Keith Collins,**

*Chief Economist.*

[FR Doc. 07–2789 Filed 6–5–07; 8:45 am]

**BILLING CODE 3410–19–M**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce (DOC) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

*Bureau:* International Trade Administration.

*Title:* Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 as Amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, and the Pension Protection Act of 2006 for Imports of Certain Worsted Wool for Imports of Certain Worsted Wool Fabric.

*Agency Form Numbers:* ITA–4139P and ITA–4140P.

*OMB Number:* 0625–0240.

*Type of Request:* Regular submission.

*Estimated Burden Hours:* 160.

*Estimated Number of Respondents:* 20.

*Estimated Average Hours per Response:* 1 to 3 hours, based on the requirement.

*Needs and Uses:* Title V of the Trade and Development Act of 2000 (''the Act''), as amended by the Trade Act of 2002, the Miscellaneous Trade Act of 2004, and the Pension Protection Act of 2006, contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics. The Act requires the President to fairly allocate the TRQ to persons who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers in the United States, and who apply for an allocation based on the amount of suits they produced in the prior year. The Department must collect certain information in order to fairly allocate the TRQ to eligible persons.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication to David Rostker, OMB Desk Officer, *David_Rostker@omb.eop.gov* or fax (202) 395–7285.

Dated: May 31, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–10877 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Institute of Standards and Technology (NIST).

*Title:* Information Seeking Behaviors and Preferences of Summer Undergraduate Research Fellowship (SURF) Program Students.

*Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Review:* Regular submission.

*Burden Hours:* 33.

*Number of Respondents:* 100.

*Average Hours per Response:* 20 minutes.

*Needs and Uses:* This study will determine how the next generation of scientists, frequently referred to as the 'Millennial Generation,' will seek scientific information in their research. This generation was born between 1982 and 2000 and has grown up with information technology. General studies show this population has technological preferences for receiving and integrating content, and this study is to learn if this extends to the scientific content among young scientists. It will identify most useful (and most desired) devices and formats, so that the NIST's Information Services Division can plan to serve the next generation of scientists. The project plans to use SURF students who work at NIST every summer as the test population.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167, or *Jasmeet_K._Seehra@omb.eop.gov*).

Dated: May 31, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–10946 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–801, A–428–801, A–475–801, A–588–804, A–559–801, A–412–801]**

### Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Preliminary Results of Antidumping Duty Administrative Reviews and Intent to Rescind Review in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The merchandise covered by these orders are ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, Singapore, and the United Kingdom. The reviews cover 21 manufacturers/exporters. The period of review is May 1, 2005, through April 30, 2006.

We have preliminarily determined that sales have been made below normal value by various companies subject to these reviews. If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in these reviews are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** June 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Yang Jin Chun or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 15, 1989, the Department published in the **Federal Register** (54 FR 20900–10) the antidumping duty orders on ball bearings from France, Germany, Italy, Japan, Singapore, and the United Kingdom. On July 3, 2006, in accordance with 19 CFR 351.213(b), we published a notice of initiation of administrative reviews of these orders (71 FR 37892). On October 16, 2006, we announced the rescission of the reviews with respect to certain firms for which we received timely withdrawals of the requests to review these firms (71 FR 60688). On January 18, 2007, we extended the due date for the completion of these preliminary results of reviews from January 31, 2007, to March 19, 2007 (72 FR 2261). On March 23, 2007, we extended the due date for the completion of these preliminary results from March 19, 2007, to April 2, 2007 (72 FR 13743). On April 5, 2007, we extended the due date for the completion of these preliminary results from April 2, 2007, to May 31, 2007 (72 FR 16764).

On August 28, 2006, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission determined that revocation of the antidumping duty order on ball bearings from Singapore would not be likely to lead to continuation or recurrence of material injury. See *Certain Bearings from China, et al.: Investigation Nos. 731–TA–344, et al. (Second Review)* (USITC Publication 3876, August 28, 2006). As a result of this determination, the Department revoked the antidumping duty order on ball bearings from Singapore, effective as of July 11, 2005. See *Antifriction Bearings and Parts Thereof from France and Singapore: Revocation of Antidumping Duty Orders*, 71 FR 54468 (September 15, 2006). Therefore, the period covered by the administrative review of the order on ball bearings from Singapore is May 1, 2005, through July 10, 2005. For the remaining orders subject to these administrative reviews, the period of review covered is May 1, 2005, through April 30, 2006. The Department is conducting these administrative reviews in accordance with section 751 of the Act.

The list of companies for which we are currently conducting administrative reviews of the antidumping duty orders on ball bearings are as follows:

France:
* SKF France S.A. or SFK Aerospace France S.A. (SKF France)
* SNR Roulements or SNR Europe (SNR)

Germany:
* Gebrüder Reinfurt GmbH & Co., KG (GRW)
* Schaeffler KG (formerly known as INA–Schaeffler KG; INA Vermogensverwaltungsgesellschaft GmbH; INA Holding Schaeffler KG; FAG Kugelfischer Georg–Schaefer AG; FAG Automobiltechnik AG; FAG OEM und Handel AG; FAG Komponenten AG; FAG Aircraft/Super Precision Bearings GmbH; FAG Industrial Bearings AG; FAG Sales Europe GmbH; FAG International Sales and Service GmbH (collectively INA/FAG)) (Schaeffler Germany)
* SKF GmbH (SKF Germany)

Italy:
* Schaeffler Italia S.r.l. (formerly known as FAG Italia S.p.A.; FAG Automobiltechnik AG; FAG OEM und Handel AG (collectively FAG Italy)) (Schaeffler Italy)
* SKF Industrie S.p.A.; SKF RIV–SKF Officine di Villas Perosa S.p.A.; RFT S.p.A.; OMVP S.p.A. (collectively SKF Italy)

Japan:
* Aisin Seiki Co., Ltd. (Aisin Seiki)
* Asahi Seiko Co., Ltd. (Asahi Seiko)
* Canon Inc. (Canon)
* JTEKT Corporation (formerly known as Koyo Seiko Co., Ltd.) (JTEKT)
* Mori Seiki Co., Ltd. (Mori Seiki)
* Nachi–Fujikoshi Corporation (Nachi)
* Nankai Seiko Co., Ltd. (Nankai Seiko)
* Nippon Pillow Block Co., Ltd. (NPB)
* NSK Ltd. (NSK)
* NTN Corporation (NTN)
* Osaka Pump Co., Ltd. (Osaka Pump)
* Sapporo Precision Inc. (Sapporo)
* KYK Corporation Ltd. (formerly known as Tottori Yamakai Bearing Seisakusho, Ltd.) (KYK)

Singapore:
* NMB Singapore Ltd. and Pelmec Industries (Pte.) Ltd. (NMB/Pelmec)

United Kingdom:
* The Barden Corporation (UK) Limited; Schaeffler (UK) Ltd. (formerly known as the Barden Corporation (UK) Ltd.; FAG (UK) Ltd. (collectively Barden/FAG)) (collectively Barden/Schaeffler UK)

**Intent to Rescind Review in Part**

In a September 18, 2006, submission, KYK stated that its predecessor–in-interest, Tottori Yamakai Bearing Seisakusho Ltd., used the trade name ''KYK'' and produced finished bearings in Japan from 1952 until it went bankrupt in 2000. KYK stated that, since emerging from bankruptcy in 2002, it has not resumed production operations in Japan and that all of the subject merchandise that KYK sold during the

period of review was of Chinese origin. We have received no comments on this submission. Because we preliminarily find that KYK had no shipments of subject merchandise during the period of review, we intend to rescind the administrative review with respect to this company. If we continue to find that KYK had no shipments of Japanese–made ball bearings at the time of our final results of administrative review, we will rescind our review for KYK.

**Scope of Orders**

The products covered by the orders are ball bearings (other than tapered roller bearings) and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following *Harmonized Tariff Schedules* (HTS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.5010, 8431.20.00, 8431.39.0010, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.2580, 8482.99.6595, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.6000, 8708.99.06, 8708.99.3100, 8708.99.4000, 8708.99.4960, 8708.99.58, 8708.99.8015, 8708.99.8080, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90.

As a result of recent changes to the HTS, effective February 2, 2007, the subject merchandise is also classifiable under the following additional HTS item numbers: 8708.30.50.90, 8708.40.75.00, 8708.50.79.00, 8708.50.8900, 8708.50.91.50, 8708.50.99.00, 8708.70.6060, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, 8708.99.81.80.

Although the HTS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of these orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. These orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, etc.) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the these orders. For unfinished parts, such parts are included if they have been heat–treated or heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by these orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of these orders.

For a listing of scope determinations which pertain to the orders, see the Scope Determination Memorandum from the Antifriction Bearings Team to Laurie Parkhill, dated May 29, 2007, which is on file in the Central Records Unit (CRU) of the main Commerce building, room B–099, in the General Issues record (A–100–001) for the 2005–2006 reviews.

**Verification**

As provided in section 782(i) of the Act, we have verified information provided by certain respondents using standard verification procedures, including on–site inspection of the manufacturers' facilities, the examination of relevant sales and financial records, and the selection of original documentation containing relevant information. Specifically, we conducted verifications of Aisin Seiki, Mori Seiki, Schaeffler Germany, and SKF Italy. Our verification results are outlined in the public versions of the verification reports, which are on file in the CRU, room B–099.

**Export Price and Constructed Export Price**

For the price to the United States, we used export price (EP) or constructed export price (CEP) as defined in sections 772(a) and (b) of the Act, as appropriate. Due to the extremely large volume of U.S. transactions that occurred during the period of review and the resulting administrative burden involved in calculating individual margins for all of these transactions, we sampled CEP sales in accordance with section 777A(c)(2) of the Act. When a firm made more than 10,000 CEP sales transactions to the United States of merchandise subject to a particular order, we reviewed CEP sales that occurred during sample weeks. We selected one week from each two-month period in the review period, for a total of six weeks, and analyzed each transaction made in those six weeks. The sample weeks are as follows: May 29, 2005 - June 4, 2005; July 17, 2005 - July 23, 2005; October 23, 2005 - October 29, 2005; November 27, 2005 - December 3, 2005; January 8, 2006 - January 14, 2006; March 19, 2006 - March 25, 2006. We reviewed all EP sales transactions the respondents made during the period of review.

We calculated EP and CEP based on the packed F.O.B., C.I.F., or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for discounts and rebates. We also made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H. Doc. No. 103–316 at 823–824, we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, which includes commissions, direct selling expenses, and U.S. repacking expenses. In accordance with section 772(d)(1) of the Act, we also deducted those indirect selling expenses associated with economic activities occurring in the United States and the profit allocated to expenses deducted under section 772(d)(1) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets. When appropriate, in accordance with section 772(d)(2) of the Act, we also deducted the cost of any further manufacture or assembly except where we applied the special rule provided in section 772(e) of the Act. Finally, we made an adjustment for profit allocated to these expenses in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers, *e.g.*, parts of bearings that were imported by U.S. affiliates of foreign exporters and then further processed into other products which were then sold to unaffiliated parties, we determined that the special rule for merchandise with value added after importation under section 772(e) of the

Act applied to all firms that added value in the United States except Aisin Seiki, Asahi Seiko, and NPB.

Section 772(e) of the Act provides that, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise sold by the exporter or producer to an unaffiliated customer if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated purchaser. Based on this analysis, we determined that the estimated value added in the United States by all further–manufacturing firms accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States, except as discussed below. See 19 CFR 351.402(c) for an explanation of our practice on this issue. Therefore, we preliminarily determine that for these firms the value added is likely to exceed substantially the value of the subject merchandise. Also, for these firms, we determine that there was a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that the use of these sales is appropriate. See the analysis memoranda for Canon, Barden/Schaeffler UK, JTEKT, Mori Seiki, Nachi, NSK, NTN, Sapporo, Schaeffler Germany, Schaeffler Italy, SKF France, SKF Germany, SKF Italy, and SNR dated May 29, 2007. Accordingly, for purposes of determining dumping margins for the sales subject to the special rule, we have used the weighted–average dumping margins calculated on sales of identical or other subject merchandise sold to unaffiliated persons.

For Asahi Seiko and NPB, we determined that the special rule did not apply because the value added in the United States did not exceed substantially the value of the subject merchandise. For Aisin Seiki, we determined that the special rule did not apply because, even though the value added in the United States exceeded substantially the value of the subject merchandise, the remaining non–further-manufactured sales were not of a sufficient quantity to provide a reasonable basis for comparison. Consequently, these firms submitted complete responses to our further–manufacturing questionnaire which included the costs of the further processing performed by their U.S. affiliates. Because the majority of their products sold in the United States were further processed, we analyzed all sales.

For NTN, we removed all zero–priced transactions from our analysis and there was no other record evidence indicating that NTN received consideration for these transactions although we did include the so–called ''sample'' sales where NTN did receive compensation. In addition, based on NTN's response to our supplemental questionnaire, we calculated a direct selling expense for NTN's EP sales, attributable to the provision of technical support and other selling–support functions to NTN's EP customer by NTN's U.S. affiliate. Furthermore, we accounted for NTN's re–calculation of its re–packing expense with respect to its reported CEP sales to capture differences in expenses associated with packing materials, packing labor, and packing labor overhead inherent in packing requirements with respect to different customer categories.

In addition, we revised NTN's calculation of inventory carrying costs incurred in Japan for NTN's EP and CEP sales by applying the factor NTN calculated for inventory carrying costs to the total cost of manufacture value it reported for each bearing model.

**Home–Market Sales**

Based on a comparison of the aggregate quantity of home–market and U.S. sales and absent any information that a particular market situation in the exporting country did not permit a proper comparison, we determined that the quantity of foreign like product sold by all respondents in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a)(1) of the Act. With the exception of Aisin Seiki, each company's quantity of sales in its home market was greater than five percent of its sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, with the exception of Aisin Seiki, we based normal value on the prices at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sales. Aisin Seiki did not make sales to any other market so we based normal value on constructed value (CV).

Due to the extremely large number of home–market transactions that occurred during the period of review and the resulting administrative burden involved in examining all of these transactions, we sampled sales to calculate normal value in accordance with section 777A of the Act. When a firm had more than 10,000 home–market sales transactions on a country–specific basis, we used sales in sample months that corresponded to the sample weeks which we selected for U.S. CEP sales, sales in a month prior to the period of review, and sales in the month following the period of review. The sample months were February, June, July, October, and November 2005 and January, March, and May 2006.

The Department may calculate normal value based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length prices. See 19 CFR 351.403(c). We excluded sales to affiliated customers for consumption in the home market that we determined not to be at arm's–length prices from our analysis. To test whether these sales were made at arm's–length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length prices. See *Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We included in our calculation of normal value those sales to affiliated parties that were made at arm's–length prices.

**Cost of Production**

In accordance with section 773(b) of the Act, we disregarded below–cost sales in the 2004–2005 reviews with respect to ball bearings sold by Asahi

Seiko, Barden/FAG, FAG Italy, GRW, JTEKT, Nachi, NPB, NSK, NTN, Schaeffler Germany, SKF France, SKF Germany, SKF Italy, and SNR and in the 2003–2004 reviews with respect to ball bearings sold by Nankai Seiko, NMB/Pelmec, and Osaka Pump. See *Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews*, 71 FR 40064, 40065–66 (July 14, 2006) (*AFBs 16*), and *Antifriction Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews*, 70 FR 54711, 54712 (September 16, 2005) (*AFBs 15*). These represent reviews for the last completed segments for the firms indicated above. Therefore, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value in these reviews may have been made at prices below the cost of production (COP) as provided by section 773(b)(2)(A)(ii) of the Act. Pursuant to section 773(b)(1) of the Act, we conducted COP investigations of sales by these firms in the home market.

In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, the selling, general, and administrative (SG&A) expenses, and all costs and expenses incidental to packing the merchandise. In our COP analysis, we used the home–market sales and COP information provided by each respondent in its questionnaire responses.

After calculating the COP, in accordance with section 773(b)(1) of the Act, we tested whether home–market sales of the foreign like product were made at prices below the COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model–specific COPs to the reported home–market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, when less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because the below–cost sales were not made in substantial quantities within an extended period of time. When 20 percent or more of a respondent's sales of a given product during the period of review were at prices less than the COP, we disregarded the below–cost sales because they were made in substantial quantities within an extended period of time pursuant to sections 773(b)(2)(B) and (C) of the Act and because, based on comparisons of prices to weighted–average COPs for the period of review, we determined that these sales were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. See the analysis memoranda for Asahi Seiko, Barden/Schaeffler UK, GRW, JTEKT, Nachi, Nankai Seiko, NMB/Pelmec, NPB, NSK, NTN, Osaka Pump, Schaeffler Germany, Schaeffler Italy, SKF France, SKF Germany, SKF Italy, and SNR dated May 29, 2007. Based on this test, we disregarded below–cost sales with respect to all of the above–mentioned companies.

We received allegations from Timken US Corporation (Timken), the petitioner, that Aisin Seiki, Canon, and Mori Seiki sold ball bearings in the home market at prices below the COP. Timken requested that the Department initiate a cost investigation of these three respondents' home–market sales of ball bearings. We found that Timken's COP allegations did not provide reasonable bases upon which to initiate the COP investigations of these three respondents. Therefore, we declined to initiate the COP investigations of these three respondents. See the Memoranda to Laurie Parkhill concerning Timken's COP allegations on Aisin Seiki, Canon, and Mori Seiki dated January 10, 2007, January 11, 2007, and January 24, 2007, respectively.

**Model–Match Methodology**

For all respondents except Aisin Seiki, we compared U.S. sales with sales of the foreign like product in the home market. Specifically, in making our comparisons, we used the following methodology. If an identical home–market model was reported, we made comparisons to weighted–average home–market prices that were based on all sales which passed the COP test of the identical product during the relevant month. We calculated the weighted–average home–market prices on a level of trade–specific basis. If there were no contemporaneous sales of an identical model, we identified the most similar home–market model. To determine the most similar model, we limited our examination to models sold in the home market that had the same bearing design, load direction, number of rows, and precision grade. Next, we calculated the sum of the deviations (expressed as a percentage of the value of the U.S. characteristics) of the inner diameter, outer diameter, width, and load rating for each potential home–market match and selected the bearing with the smallest sum of the deviations. If two or more bearings had the same sum of the deviations, we selected the model that was sold at the same level of trade as the U.S. sale and was the closest contemporaneous sale to the U.S. sale. If two or more models were sold at the same level of trade and were sold equally contemporaneously, we selected the model that had the smallest difference–in-merchandise adjustment. Finally, if no bearing sold in the home market had a sum of the deviations that was less than 40 percent, we concluded that no appropriate comparison existed in the home market and we used the CV of the U.S. model as normal value. For a full discussion of the model–match methodology for these reviews, see *AFBs 15* at Comments 2, 3, 4, and 5 and *Antifriction Bearings and Parts Thereof from France, et al.: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Reviews*, 70 FR 25538, 25542 (May 13, 2005).

**Normal Value**

Home–market prices were based on the packed, ex–factory, or delivered prices to affiliated or unaffiliated purchasers. When applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411 and for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparisons to EP, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to normal value. For comparisons to CEP, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from normal value. We also made adjustments, when applicable, for home–market indirect selling expenses to offset U.S. commissions in EP and CEP calculations.

For NTN's sales of samples in the home market, we have determined that these sales were made outside the ordinary course of trade and have excluded them from our calculation of normal value. We did not accept NTN's claim for an elimination of so–called high–profit sales in the home market from the calculation of normal value because NTN did not demonstrate that these sales were made outside the ordinary course of trade. Furthermore,

we accounted for NTN's re–calculation of its packing expense for reported home–market sales to capture differences in expenses associated with packing materials inherent in packing requirements with respect to different customer categories.

In addition, we revised NTN's calculation of inventory carrying costs incurred in the home market for its home–market sales by applying the factor for inventory carrying costs it calculated to the total cost of manufacture value it reported for each bearing model.

For JTEKT, consistent with *Antifriction Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination To Revoke Order in Part*, 69 FR 55574 (September 15, 2004), and the accompanying Issues and Decision Memorandum at Comment 21, *AFBs 15* at Comment 10, and *AFBs 16* at Comment 22, we denied certain negative home–market billing adjustments that JTEKT granted on a model–specific basis but reported on a broad customer–specific basis. See the analysis memorandum for JTEKT dated May 29, 2007, for a more detailed discussion.

In the last administrative review, we examined the relationship between JTEKT and one of its affiliated home–market firms and determined that it is appropriate to collapse these two companies as one entity. See *AFBs 16* at Comment 18. In this review, we have examined the business relationship between JTEKT and its affiliate and determined that it is appropriate to continue to collapse these two companies as one entity based on additional facts we obtained in this administrative review.

JTEKT and its affiliate at issue are in a parent–subsidiary relationship in which JTEKT controls its subsidiary's decision–making bodies that decide on the subsidiary's business policy, finance, and operations because JTEKT owns more than 40 percent of its subsidiary's shares and JTEKT sells a significant portion of ball bearings manufactured by its subsidiary under an agreement that dates back to 1963. This parent–subsidiary relationship is established under Japan's Ministry of Finance Ordinance No. 59, Article 8(3) and 8(4) (hereafter Ordinance No. 59). JTEKT discloses the financial information of its subsidiary under certain circumstances in accordance with the Tokyo Stock Exchange's Rules on Timely Disclosure of Corporate Information by Issuer of Listed Security and the Like, Article 2–2-(3). JTEKT develops products with this subsidiary. This subsidiary also markets itself as a company associated with JTEKT and JTEKT's other subsidiaries.

In its November 15, 2006, comment, Timken refers to the Department's decision in *AFBs 16* to collapse JTEKT and its subsidiary after considering several factors and Timken supports the continued collapsing of JTEKT and its subsidiary. Timken argues that a majority–share ownership or a company's ability to ''compel'' another company to share the other company's information with the company is not a necessary prerequisite to collapse two companies. JTEKT opposes our decision to collapse it with its subsidiary, arguing that JTEKT is not the parent of its subsidiary under the Commercial Code of Japan, Article 211–2, para. 3 (Law No. 48 of March 9, 1899) (hereafter Article 211–2), which requires that a company own the majority share of another company to be a parent company of the other company. JTEKT argues that Ordinance No. 59 is for financial purposes only. Therefore, JTEKT claims, it cannot compel its subsidiary to share the subsidiary's confidential production and sales information with it.

While Article 211–2 is silent on other circumstances in which JTEKT may be the parent company of another company, Ordinance No. 59 sets forth other specific circumstances in which JTEKT is the parent company of its subsidiary at issue and, therefore, controls its subsidiary's decision–making bodies that decide on the subsidiary's business policies, finance, and operations. The parent–subsidiary relationship and the business activities between these two companies confirm that JTEKT controls its subsidiary's decision–making bodies in view of their business, financial, and operational relationship. Therefore, we preliminarily find that JTEKT can compel its subsidiary to share its subsidiary's production and sales information with JTEKT.

We continue to find that these two companies have intertwined operations and that a potential exists for JTEKT to manipulate prices and production of its subsidiary supplier, pursuant to 19 CFR 351.401(f)(2). Therefore, for purpose of these preliminary results, we continue to collapse these two companies for this review. See the analysis memorandum for JTEKT dated May 29, 2007, for further details that include reference to JTEKT's business–proprietary information.

In accordance with section 773(a)(1)(B)(i) of the Act, we based normal value, to the extent practicable, on sales at the same level of trade as the EP or CEP. If normal value was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with section 773(a)(7)(A) of the Act. See the *Level of Trade* section below.

**Actual Costs**

Where the sale to an exporter or a reseller is of finished subject merchandise, the Department's practice is to rely on the COP or CV of the producer. See *Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries From Chile*, 70 FR 6618 (February 8, 2005), and the accompanying Issues and Decision Memorandum at Comment 3, and *Notice of Final Results of Antidumping Duty Administrative Review: Individually Quick Frozen Red Raspberries from Chile*, 72 FR 6524 (February 12, 2007), and the accompanying Issues and Decision Memorandum at Comment 8. Pursuant to section 773(e)(1) of the Act, CV shall be based upon the cost of materials and fabrication or other processing of any kind employed in producing the merchandise. See the *Constructed Value* section below.

In our original questionnaire dated July 10, 2006, we instructed respondents that, if they met the requirement for providing COP or CV information, they were to respond to Question 8 of Appendix V of the questionnaire by July 31, 2006. In Question 8, we sought information concerning each respondent's total sales of bearings manufactured by unaffiliated suppliers, the suppliers' identities, and whether each respondent produced bearings that were the same as the bearings it purchased from the unaffiliated suppliers during the period of review. We requested this information to determine whether to require individual respondents to report their unaffiliated suppliers' actual COP or CV data. We clarified this request following questions from respondents. See the Memorandum to Laurie Parkhill, Office Director, entitled ''Sales of Merchandise Under Review Supplied by an Unaffiliated Producer in the 2005–2006 Review of the Antidumping Duty Order on Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom,'' dated July 27, 2006.

After analyzing the information we received from certain respondents in response to Question 8, we required Schaeffler Italy and SKF Germany to report COP/CV information for certain

of their unaffiliated suppliers. See Memorandum to Laurie Parkhill entitled ''Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Calculation of the Cost of Production and Constructed Value for Merchandise Produced by Unaffiliated Suppliers,'' dated September 7, 2006. (Since the issuance of the memorandum, we have rescinded the reviews of two other companies for which we made a similar determination.) In that same memorandum, we also stated that companies that had not responded to Question 8 would be required to report CV information of their unaffiliated suppliers if we were to determine that the calculation of their dumping margin necessitated the use of CV for normal value. We made the memorandum available to all respondents in these reviews.

We received actual–cost information for the bearings SKF Germany and Schaeffler Italy had purchased from the respective suppliers we identified in our September 7, 2006, memoranda to the file entitled ''Ball Bearings and Parts Thereof from Germany: SKF Germany's Sales of Merchandise Produced by Unaffiliated Suppliers'' and ''Ball Bearings and Parts Thereof from Italy: FAG Italy's Sales of Merchandise Produced by Unaffiliated Suppliers.'' Three of the respondents in the Japan review, Aisin Seiki, Canon, and Mori Seiki, did not respond to Question 8 in a timely manner. Aisin Seiki, Canon, and Mori Seiki notified us in their original questionnaire responses dated October 4, 2006, October 3, 2006, and September 27, 2006, respectively, that they had purchased all of their bearings from Japanese producers but did not report actual–cost information. Over the course of the review, we requested information from Aisin Seiki, Canon, and Mori Seiki about their purchases and cost information. They responded that, although they had asked their unaffiliated suppliers to provide the information, the unaffiliated suppliers refused to provide the actual–cost information for virtually all models these resellers sold.

On March 30, 2007, we requested that all manufacturers that produced bearings in Japan and sold bearings to Aisin Seiki, Canon, and Mori Seiki, either directly or through an affiliated sales company, provide actual–cost information for such bearings. See letters to certain manufacturers from Laurie Parkhill dated March 30, 2007, in the file containing business–proprietary information in the Japan proceeding. These manufacturers submitted the required information and we used it, where necessary, in our margin calculations for the three firms. Where Aisin Seiki, Canon, and Mori Seiki did not purchase bearings directly from the manufacturers or an affiliated sales company but obtained the bearings from another unaffiliated party in the sales chain or where Aisin Seiki, Canon, and Mori Seiki purchased bearings from manufacturers or their affiliates but these suppliers did not produce the bearings, we used the prices at which the three firms acquired the bearings at issue, as needed, for our margin calculations. For Aisin Seiki, Canon, and Mori Seiki, we had all necessary actual or acquisition costs to complete our margin calculations.

**Constructed Value**

In accordance with section 773(a)(4) of the Act, we used CV as the basis for normal value when there were no usable sales of the foreign like product in the comparison market or, in the case of Aisin Seiki, where the company did not have a viable home or third–country market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, U.S. packing expenses, and profit in the calculation of CV. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by each respondent (with the exception of Aisin Seiki, which we describe below) in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market.

When appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act, 19 CFR 351.410, and 19 CFR 351.412 for circumstance–of-sale differences and level–of-trade differences. For comparisons to EP, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from and adding U.S. direct selling expenses to CV. For comparisons to CEP, we made circumstance–of-sale adjustments by deducting home–market direct selling expenses from CV. We also made adjustments, when applicable, for home–market indirect selling expenses to offset U.S. commissions in EP and CEP comparisons.

When possible, we calculated CV at the same level of trade as the EP or CEP. If CV was calculated at a different level of trade, we made an adjustment, if appropriate and if possible, in accordance with sections 773(a)(7) and (8) of the Act.

We calculated G&A expenses and interest expenses by obtaining rates for these items from Aisin Seiki's unconsolidated financial statements and applying them to the total costs, G&A, and interest expense of the bearing models Aisin Seiki sold to the United States. Because Aisin Seiki did not have a viable comparison market, in accordance with section 773(e)(2)(B)(ii) of the Act, we calculated selling expenses and profit for Aisin Seiki's CV based on the weighted–average selling expenses and profit we calculated for the other exporters or producers subject to the review in connection with sales of the foreign like product, in the ordinary course of trade, in the foreign country. See the analysis memorandum for Aisin Seiki dated May 29, 2007, for a more detailed discussion of our calculation of CV for Aisin Seiki.

**Level of Trade**

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales (either EP or CEP). When there were no sales at the same level of trade, we compared U.S. sales to home–market sales at a different level of trade. The normal–value level of trade is that of the starting–price sales in the home market. When normal value is based on CV, the level of trade is that of the sales from which we derived SG&A and profit.

To determine whether home–market sales are at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison–market sales were at a different level of trade from that of a U.S. sale and the difference affected price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison–market sales at the level of trade of the export transaction, we made a level–of-trade adjustment under section 773(a)(7)(A) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

Where the respondent reported no home–market levels of trade that were equivalent to the CEP level of trade and where the CEP level of trade was at a less advanced stage than any of the home–market levels of trade, we were unable to calculate a level–of-trade adjustment based on the respondent's home–market sales of the foreign like product. Furthermore, we have no other information that provides an

appropriate basis for determining a level–of-trade adjustment. For respondents' CEP sales, to the extent possible, we determined normal value at the same level of trade as the U.S. sale to the unaffiliated customer and made a CEP–offset adjustment in accordance with section 773(a)(7)(B) of the Act. The CEP–offset adjustment to normal value was subject to the so–called offset cap, calculated as the sum of home–market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP (or, if there were no home–market commissions, the sum of U.S. indirect selling expenses and U.S. commissions).

For a company–specific description of our level–of-trade analyses for these preliminary results, see Memorandum to Laurie Parkhill from Antifriction Bearings Team entitled ''Antifriction Bearings and Parts Thereof from Various Countries - 2005/2006 Level–of-Trade Analysis,'' dated May 29, 2007, on file in the CRU, room B–099.

**Preliminary Results of Reviews**

As a result of our reviews, we preliminarily determine that the following percentage weighted–average dumping margins on ball bearings and parts thereof from various countries exist for the period May 1, 2005, through April 30, 2006:

FRANCE

| Company | Margin (percent) |
|---|---|
| SKF France | 8.99 |
| SNR | 13.32 |

GERMANY

| Company | Margin |
|---|---|
| GRW | 0.35 |
| Schaeffler Germany | 3.03 |
| SKF Germany | 11.06 |

ITALY

| Company | Margin |
|---|---|
| Schaeffler Italy | 1.60 |
| SKF Italy | 8.83 |

JAPAN

| Company | Margin |
|---|---|
| Aisin Seiki | 6.48 |
| Asahi Seiko | 1.28 |
| Canon | 10.50 |
| JTEKT | 15.85 |
| Mori Seiki | 1.93 |
| Nachi | 11.46 |
| Nankai Seiko | 3.01 |
| NPB | 26.89 |
| NSK | 3.66 |
| NTN | 7.76 |
| Osaka Pump | 4.76 |
| Sapporo | 7.63 |

SINGAPORE

| Company | Margin |
|---|---|
| NMB/Pelmec | 12.61 |

UNITED KINGDOM

| Company | Margin |
|---|---|
| Barden/Schaeffler UK | 0.28 |

**Comments**

We will disclose the calculations used in our analysis to parties to these reviews within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. A general–issues hearing, if requested, and any hearings regarding issues related solely to specific countries, if requested, will be held at the main Department building at times and locations to be determined.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain the following: (1) the party's name, address, and telephone number; (2) the number of participants; (3) a list of issues to be discussed. See 19 CFR 351.310(c).

Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than the dates shown below for general issues and the respective country–specific reviews. Parties who submit case briefs or rebuttal briefs in these proceedings are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

| Case | Briefs due | Rebuttals due |
|---|---|---|
| General Issues | July 2, 2007 | July 9, 2007 |
| Germany | July 3, 2007 | July 10, 2007 |
| Italy | July 5, 2007 | July 12, 2007 |
| Singapore and United Kingdom | July 5, 2007 | July 12, 2007 |
| France | July 6, 2007 | July 13, 2007 |
| Japan | July 9, 2007 | July 16, 2007 |

The Department will issue the final results of these administrative reviews, including the results of its analysis of issues raised in any such written briefs or at the hearings, if held, not later than 120 days after the date of publication of this notice.

**Assessment Rates**

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to these reviews. We will issue instructions to CBP 15 days after publication of the final results of these reviews.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment of Antidumping Duties*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of reviews for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Assessment of Antidumping Duties*.

*Export–Price Sales*

With respect to EP sales, for these preliminary results, we divided the total dumping margins (calculated as the difference between normal value and EP) for each exporter's importer or customer by the total number of units the exporter sold to that importer or customer. We will direct CBP to assess the resulting per–unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period.

*Constructed Export–Price Sales*

For CEP sales (sampled and non–sampled), we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct CBP to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. See 19 CFR 351.212(b).

**Cash–Deposit Requirements**

In order to derive a single weighted–average margin for each respondent, we weight–averaged the EP and CEP weighted–average deposit rates (using the EP and CEP, respectively, as the weighting factors). To accomplish this when we sampled CEP sales, we first calculated the total dumping margins for all CEP sales during the review period by multiplying the sample CEP margins by the ratio of total days in the review period to days in the sample weeks. We then calculated a total net value for all CEP sales during the review period by multiplying the sample CEP total net value by the same ratio. Finally, we divided the combined total dumping margins for both EP and CEP sales by the combined total value for both EP and CEP sales to obtain the deposit rate.

Furthermore, with the exception of ball bearings and parts thereof from Singapore for which the Department revoked the order effective July 11, 2005, the following deposit requirements will be effective upon publication of the notice of final results of administrative reviews for all shipments of ball bearings and parts thereof entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash–deposit rates for the reviewed companies will be the rates established in the final results of reviews; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the less–than-fair–value investigations but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash–deposit rate for all other manufacturers or exporters will continue to be the ''All Others'' rate for the relevant order made effective by the final results of review published on July 26, 1993. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Duty Order*, 58 FR 39729, 39730 (July 26, 1993). For ball bearings from Italy, see *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 61 FR 66472, 66521 (December 17, 1996). These rates are the ''All Others'' rates from the relevant less–than-fair–value investigations. These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importer**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

These preliminary results of administrative reviews are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 29, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–10913 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE.

### International Trade Administration

**[A–570–822]**

## Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marin Weaver at (202) 482–2336 or Charles Riggle at (202) 482–0650, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On November 27, 2006, the Department of Commerce (''the Department'') published the initiation of the administrative review of the antidumping duty order on certain helical spring lock washers (''HSLWs'') from the People's Republic of China (''PRC''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 68535 (November 27, 2006). This review covers the period October 1, 2005, through September 30, 2006. The preliminary results of review are currently due no later than July 3, 2007.

**Extension of Time Limit for Preliminary Results of Review**

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

The Department finds that it is not practicable to complete the preliminary results of the administrative review of HSLWs from the PRC within this time limit. Specifically, due to the verification of the questionnaire responses scheduled in June, we find that additional time is needed to complete these preliminary results.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for completion of the preliminary results of this review by 63 days until September 4, 2007. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: May 30, 2007.

**Stephen J. Claeys,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. E7–10904 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–839]**

### Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Intent to Rescind

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from the Republic of Korea. The period of review is May 1, 2005, through April 30, 2006. This review covers imports of certain polyester staple fiber from one producer/exporter. We preliminarily find that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to assess antidumping duties. Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** June 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Andrew McAllister or Scott Holland, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1174 and (202) 482–1279, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 25, 2000, the Department of Commerce (''Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from the Republic of Korea (''Korea''). *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 33807 (May 25, 2000). On May 1, 2006, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 25565 (May 1, 2006). On May 31, 2006, Wellman, Inc.; Invista, S.a.r.L.; and DAK Americas, LLC (collectively, ''the petitioners'') requested administrative reviews of Huvis Corporation (''Huvis''); Saehan Industries, Inc. (''Saehan''); Daehan Synthetic Company, Ltd. (''Daehan''); and Dongwoo Industry Company (''Dongwoo''). On May 31, 2006, Huvis requested an administrative review. The petitioners withdrew their requests for administrative reviews of Saehan and Daehan on June 19, 2006, and June 21, 2006, respectively. On July 3, 2006, the Department published a notice initiating the review with respect to Huvis and Dongwoo. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892, 37900 (July 3, 2006). The period of review (''POR'') is May 1, 2005, through April 30, 2006.

On July 13, 2006, we issued antidumping questionnaires in this review. On August 10, 2006, Dongwoo responded that it had no shipments of subject merchandise during the POR. We received sections A through D questionnaire responses from Huvis on August 17, 2006, September 8, 2006, and September 22, 2006. In November 2006, January 2007, and March 2007, we issued supplemental questionnaires to Huvis. We received responses to these supplemental questionnaires in January 2007, February 2007, and April 2007, respectively.

On January 16, 2007, the Department published in the **Federal Register** an extension of the time limit for the completion of the preliminary results of this review until no later than May 31, 2007, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2). *See Certain Polyester Staple Fiber from Taiwan and the Republic of Korea: Notice of Extension of Time Limit for the 2005–2006 Administrative Reviews*, 72 FR 1703 (January 16, 2007).

#### Scope of the Order

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.25 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

#### Intent to Rescind Administrative Review

As noted above, Dongwoo stated that it had no shipments of subject merchandise during the POR. The Department confirmed using CBP data that Dongwoo did not ship subject merchandise to the United States during the POR. Therefore, pursuant to 19 CFR 351.213(d)(3), we are preliminarily rescinding this review with respect to Dongwoo.

#### Fair Value Comparisons

To determine whether Huvis' sales of PSF to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EP of individual U.S. transactions to the weighted–average NV of the foreign–like product, where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market covered by the description in the ''Scope of the Order'' section, above, to be foreign–like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign–like product to the volume of its U.S. sales of the subject merchandise. For further details, see the ''Normal Value'' section, below.

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the home market. Where there were no contemporaneous sales of identical merchandise in the home market, we compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. *See* 19 CFR 351.414(e)(2). As directed by section 771(16) of the Act, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign–like product made in the ordinary course of trade. Further, as provided in section 773(a)(4) of the Act, where we could not determine NV because there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV'').

**Date of Sale**

For its home market sales, Huvis reported invoice date as its date of sale, as Huvis permits home market customers to make order changes up to that time. Thus, Huvis' invoices to its home market customers establish the material terms of sale.

For one home market sale, consistent with 19 CFR 351.401(i), we used the tax invoice date as the date of sale because it reflected the date on which the material terms of sale were established. We made this adjustment because the tax invoice date preceded both the date of shipment and the date of invoice. *See* Memorandum from Team to the File, ''*Preliminary Results Calculation Memorandum - Huvis Corporation*,'' dated May 31, 2007 (''*Huvis Calculation Memorandum*'').

For its U.S. sales, Huvis reported date of shipment as its date of sale, as it permits U.S. customers to make order changes up to the date of shipment. Thus, because the merchandise is always shipped before the date of invoice and the material terms of sale are established on the date of shipment, the date of shipment is the proper date of sale. *See Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998).

**Export Price**

For sales to the United States, we calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We calculated EP based on the cost, insurance, and freight (''CIF''); ex–dock duty paid - free–on-board (''EDDP–FOB''); and EDDP - CIF price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: loading fees, inland freight from the plant to port of exportation, foreign brokerage and handling, international freight, marine insurance, and U.S. customs duty.

We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. Huvis provided documentation demonstrating that it received duty drawback under Korea's individual–rate system. In prior investigations and administrative reviews, the Department has examined Korea's individual–rate system and found that the government controls in place generally satisfy the Department's requirements for receiving a duty drawback adjustment (*i.e.*, that (1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and (2) there were sufficient imports to account for the rebates received). *See, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion–Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (Feb. 13, 2006), and accompanying *Issues and Decisions Memorandum*, at Comment 2. We examined the documentation submitted by Huvis in this administrative review and confirmed that it meets the Department's two–prong test (mentioned above) for receiving a duty drawback adjustment. Accordingly, we are allowing the reported duty drawback adjustment on Huvis' U.S. sales.

**Normal Value**

*A. Selection of Comparison Market*

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent's home market sales of the foreign–like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because the respondent's aggregate volume of home market sales of the foreign–like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison.

*B. Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997) (''*CTL Plate*''). In order to determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. *CTL Plate*, 62 FR at 61732. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. *CTL Plate*, 62 FR at 61732. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

category''), and the level of selling expenses for each type of sale. *Id.*

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[3] we consider the starting prices before any adjustments. *See Micron Tech, Inc. v. United States*, et al., 243 F.3d 1301, 1314–15 (Fed. Cir. 2001) (interpreting Congressional intent, in accordance with this methodology).

When the Department is unable to match U.S. sales to sales of the foreign–like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Huvis reported a single channel of distribution and a single level of trade in each market, and has not requested a LOT adjustment. In the single channel of distribution for U.S. sales, merchandise is shipped directly to the customer on a CIF, EDDP–FOB, or EDDP–CIF basis. For home market sales, merchandise is delivered to the customer's location.

We examined the information reported by Huvis regarding its marketing process for making the reported home market and U.S. sales, including the type and level of selling activities performed, and customer categories. Specifically, we considered the extent to which the sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets.

Huvis reported that it made direct sales to distributors and end users in the home market and sales to distributors in the United States. For sales in the home market and to the United States, Huvis' selling activities included negotiating sales terms, receiving and processing orders, and arranging for freight and delivery, and preparing shipping documents. For each market, Huvis was available to provide technical advice upon a customer's request. For sales in the home market and to the United States, Huvis offered no inventory maintenance services nor advertising, and it did not handle any warranty claims during the POR.

Because the selling functions were similar in both markets, we preliminarily find that a single LOT exists in the home market and in the United States, and that Huvis' home market and U.S. sales were made at the same LOT.

*C. Sales to Affiliated Customers*

Huvis made sales in the home market to an affiliated customer. To test whether these sales were made at arm's length, we compared the starting prices of sales to the affiliated customer to those of unaffiliated customers, net of all movement charges, direct and indirect selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (Nov. 15, 2002). In accordance with the Department's practice, we included in our margin analysis only sales to an affiliated party that were made at arm's length.

*D. Cost of Production Analysis*

In the most recently completed administrative review, we had disregarded some sales by Huvis because they were made at prices below the cost of production (''COP''). Under section 773(b)(2)(A)(ii) of the Act, previously disregarded below–cost sales provide reasonable grounds to believe or suspect that the respondent made sales of the subject merchandise in its comparison market at prices below the COP within the meaning of section 773(b) of the Act. Whenever the Department has this reason to believe or suspect sales were made below the COP, we are directed by section 773(b) of the Act to determine whether, in fact, there were below–cost sales.

Pursuant to section 773(b)(1), we disregard sales from our calculation of NV that were made at less than the COP if they were made in substantial quantities over an extended period of time at prices that would not permit recovery of costs within a reasonable period. We find that the below–cost sales represent ''substantial quantities,'' when 20 percent or more of the respondent's sales of a given product are at prices less than the COP, in accordance with section 773(b)(2)(C) of the Act. Further, in accordance with section 773(b)(2)(B) of the Act, the Department normally considers sales to have been made within an extended period of time when made during a period of one year. Finally, prices do not permit recovery of costs within a reasonable period of time if the per unit COP at the time of sale is below the weighted average per unit COP for the POR, in accordance with section 773(b)(2)(D) of the Act.

**Application of Facts Otherwise Available**

Section 776(a) of the Act provides that the Department will apply ''facts otherwise available'' if, *inter alia*, necessary information is not available on the record or an interested party: (1) withholds information that has been requested by the Department; (2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

As discussed in the ''Calculation of COP'' section below, Huvis failed to provide market prices for purified terephthalic acid (''PTA'') and qualified terephthalic acid (''QTA'') as requested by the Department. Therefore, under section 776(a) of the Act, use of facts otherwise available is warranted in determining the market price for PTA and QTA.

*1. Calculation of COP*

We calculated the COP on a product–specific basis, based on the sum of the respondent's costs of materials and fabrication for the merchandise under review, plus amounts for SG&A expenses, financial expenses, and the costs of all expenses incidental to placing the foreign–like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in Huvis' cost questionnaire responses except for the following adjustments.

(1) We adjusted Huvis' reported cost of manufacturing (''COM'') to account for purchases of PTA, modified terephthalic acid (''MTA''), and QTA from affiliated parties at non–arm's–length prices. *See Huvis Calculation Memorandum.*

Consistent with our finding in the previous administrative review, the

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative (''SG&A'') expenses, and profit for CV, where possible. *See, e.g., Certain Polyester Staple Fiber from Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review*, 70 FR 32756, 32757 (June 6, 2005) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Polyester Staple Fiber from the Republic of Korea*, 70 FR 73435 (Dec. 12, 2005)).

record of this review does not support interchangeability for MTA and QTA because they contain different impurity levels and there is no evidence to indicate that the same input amounts of MTA or QTA were required to produce a specific PSF product. *See Huvis Calculation Memorandum; see also Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 58581 (Oct. 4, 2006), and accompanying *Issues and Decision Memorandum (''Final Results of 2004/05 Administrative Review'')* at Comment 1. In the instant review, Huvis failed to provide a market price for QTA, as requested in the Department's original and supplemental questionnaires. Therefore, in accordance with sections 773(f)(3) and 776(a) of the Act, we have relied on facts available to make a determination of market value. We added the supplier's profit rate, which we calculated from the supplier's financial statements for the fiscal year ending 2005, to the supplier's COP as a reasonable proxy for the missing market price of this input. Under section 773(f)(3) of the Act and 19 CFR 351.407(b), the Department will determine the value of a major input from an affiliated person based on the higher of the transfer price, the market price, or the affiliate's COP. We adjusted Huvis' reported transfer price of QTA by the percent difference between the reported transfer price and the higher of market price or affiliate's COP.

For PTA, we find that it is not a major input because Huvis' purchases of PTA do not represent a significant percentage of the total COM of merchandise under review. However, Huvis also failed to provide a market price for this input. Therefore, in accordance with sections 773(f)(2) and 776(a) of the Act, we have relied on facts available to make a determination of market value. We applied the same methodology used for QTA to calculate a proxy market price for PTA. Under section 773(f)(2), the the Department may disregard transactions if the transfer price of an input does not fairly reflect the amount usually reflected for sales of that input. Because the market price of PTA exceeded the transfer price, we adjusted Huvis' reported transfer price of PTA by the percent difference between the reported transfer price and the market price.

For MTA, similar to QTA, we determined the value of this major input based on the higher of the transfer price, the market price, or the affiliate's COP. We adjusted Huvis' reported transfer price of MTA by the percent difference between the reported transfer price and the higher of market price or affiliate's COP.

(2) For Huvis' affiliated supplier of QTA and PTA, we adjusted the reported combined SG&A and financial expenses ratio to properly calculate each ratio separately and set the negative ratio to zero. We added these expenses to COM. *See Huvis Calculation Memorandum.*

(3) For Huvis and its affiliated supplier of MTA, the interest expenses were offset by interest on deposits for retirement insurance. Consistent with our treatment of this income in the previous administrative review, we excluded this offset because it is not related to interest income incurred on short–term investments of working capital. *See Final Results of 2004/05 Administrative Review at Comment 4; Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of the Antidumping Duty Administrative Review*, 70 FR 3677 (Jan. 26, 2005), and accompanying *Issues and Decision Memorandum (''SSSSC from Mexico'')* at Comment 11; *see also Huvis Calculation Memorandum.*

(4) For Huvis' affiliated supplier of MTA, we excluded an offset for long–term interest income from its SG&A and financial expenses for the same reason as that stated above. *See SSSSC from Mexico* at Comment 11; *see also Huvis Calculation Memorandum.*

(5) In its SG&A ratio, Huvis excluded the depreciation cost of idle assets because it stated that the cost was not related to the production or sale of subject merchandise. Consistent with our treatment of these expenses in the previous administrative review, we have included the depreciation costs because idle assets are considered an overhead burden and appropriately part of SG&A expenses. *See Final Results of 2004/05 Administrative Review* at Comment 3. Further, it is not relevant that the idle assets did not produce merchandise under review because these idle assets were related to the general operations of the company as a whole. *Id.; see also Huvis Calculation Memorandum.*

*2. Test of Home Market Prices*

On a product–specific basis, we compared the adjusted weighted–average COP figures for the POR to the home market sales of the foreign–like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. According to our practice, the prices were exclusive of any applicable movement charges and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

*3. Results of COP Test*

We found that, for certain products, more than 20 percent of the respondent's home market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product, as the basis for determining NV, in accordance with section 773(b)(1).

*E. Calculation of Normal Value Based on Home Market Prices*

We calculated NV based on the price to unaffiliated customers. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, where appropriate, consistent with section 773(a)(6)(B)(ii) of the Act, for loading fees and for inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale (''COS''), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (i.e., credit expenses and bank charges) and adding U.S. direct selling expenses (*i.e.*, credit expenses and bank charges). *See* 19 CFR 351.410(c).

**Preliminary Results of the Review**

We find that the following dumping margin exists for the period May 1, 2005, through April 30, 2006:

| Exporter/manufacturer | Weighted–average margin percentage |
|---|---|
| Huvis Corporation ..... | 2.51 |

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of

this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results. *See* section 751(a)(3) of the Act.

**Assessment Rates**

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Huvis submitted evidence demonstrating that it was the importer of record for certain of its POR sales. We examined the customs entry documentation submitted by Huvis and tied it to the U.S. sales listing. We noted that Huvis was indeed the importer of record for certain sales. Therefore, for purposes of calculating the importer–specific assessment rates, we have treated Huvis as the importer of record for certain POR shipments. Pursuant to 19 CFR 351.212(b)(1), for all sales where Huvis is the importer of record, Huvis submitted the reported entered value of the U.S. sales and we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding sales where Huvis was not the importer of record, we note that Huvis did not report the entered value for the U.S. sales in question. Accordingly, we have calculated importer–specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* ratios based on the estimated entered value.

Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis (i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these preliminary results for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. *Id.*

If the Department rescinds this review with respect to Dongwoo, and in the event any entries were made during the POR through intermediaries under the CBP case number for Dongwoo, the Department will instruct CBP to liquidate such entries at the all–others rate in effect on the date of entry, consistent with the May 6, 2003 clarification discussed above.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.50 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than–fair–value investigation or a previous review, the cash deposit rate will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 7.91 percent, the all- others rate established in *Certain Polyester Staple Fiber from the Republic of Korea: Notice of Amended Final Determination and Amended Order Pursuant to Final Court Decision*, 68 FR 74552 (December 24, 2003).

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 30, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–10907 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–833]**

### Certain Polyester Staple Fiber from Taiwan: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on certain polyester staple fiber from Taiwan. The period of review is May 1, 2005, through April 30, 2006. This review covers imports of certain polyester staple fiber from one producer/exporter. We have preliminarily found that sales of the subject merchandise have not been made below normal value. If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection to liquidate without regard to antidumping duties. Interested parties are invited to comment on these preliminary results.

We will issue the final results not later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** June 6, 2007

**FOR FURTHER INFORMATION CONTACT:** Devta Ohri or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–3853 and (202) 482–0182, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 25, 2000, the Department of Commerce (''Department'') published an antidumping duty order on certain polyester staple fiber (''PSF'') from Taiwan. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea and Antidumping Duty Orders: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan*, 65 FR 16877 (March 30, 2000); *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from Taiwan*, 65 FR 24678 (April 27, 2000). On May 1, 2006, the Department published a notice of ''Opportunity to Request Administrative Review'' of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 25565 (May 1, 2006). On May 31, 2006, Far Eastern Textile Limited (''FET'') requested an administrative review. On July 3, 2006, the Department published a notice initiating an administrative review for PSF from Taiwan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 37892 (July 3, 2006). The period of review (''POR'') is May 1, 2005, through April 30, 2006.

On July 13, 2006, we issued an antidumping questionnaire to FET. We received questionnaire responses from FET on August 21, 2006, and September 21, 2006. In December 2006, and January and February 2007, we issued supplemental questionnaires to FET. We received responses to these supplemental questionnaires in January, February, and March 2007.

**Scope of the Order**

For the purposes of this order, the product covered is PSF. PSF is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this order may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) currently classifiable in the *Harmonized Tariff Schedule of the United States* (''HTSUS'') at subheading 5503.20.00.20 is specifically excluded from this order. Also specifically excluded from this order are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting). In addition, low–melt PSF is excluded from this order. Low–melt PSF is defined as a bi–component fiber with an outer sheath that melts at a significantly lower temperature than its inner core.

The merchandise subject to this order is currently classifiable in the HTSUS at subheadings 5503.20.00.45 and 5503.20.00.65. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under order is dispositive.

**Verification**

As provided in section 782(i)(3) of the Act, during April 2007, we conducted a verification of the information reported by FET in Taiwan using standard verification procedures, including examination of relevant sales and financial records, and selection of original documentation containing relevant information. The Department reported its findings on May 31, 2007. See Memorandum to the File, ''*Verification of the Sales Response of Far Eastern Textile Limited in the 2005–2006 Antidumping Duty Administrative Review of Polyester Staple Fiber from Taiwan,*'' dated May 31, 2007 (''*FET Sales Verification Report*''); and Memorandum to the File, ''Verification of the Cost Response of Far Eastern Textile Limited in the Antidumping Administrative Review of Polyester Staple Fiber from Taiwan,'' dated May 31, 2007 (''FET Cost Verification Report''). These reports are on file in the Central Records Unit (''CRU'') in room B–099 of the main Department building.

**Fair Value Comparisons**

To determine whether FET's sales of PSF to the United States were made at less than normal value (''NV''), we compared export price (''EP'') to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Tariff Act of 1930, as amended (''the Act''), we compared the EP of individual U.S. transactions to the weighted–average NV of the foreign–like product, where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section, below.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market covered by the description in the ''Scope of the Order'' section, above, to be foreign–like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with sections 773(a)(1)(B) and (C) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign–like product to the volume of its U.S. sales of the subject merchandise. (For further details, *see* the ''Normal Value'' section, below.)

We compared U.S. sales to monthly weighted–average prices of contemporaneous sales made in the home market. Where there were no contemporaneous sales of identical merchandise in the home market, we compared sales made within the window period, which extends from three months prior to the POR until two months after the POR. As directed by section 771(16) of the Act, where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign–like product made in the ordinary course of trade.

Further, as provided in section 773(a)(4) of the Act, where we could not determine NV because there were no sales of identical or similar merchandise made in the ordinary course of trade in the home market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV'').

**Date of Sale**

In its questionnaire responses, FET reported date of shipment as the date of sale for its U.S. sales, and the date of invoice as the date of sale for its home market sales. FET has stated that it permits home market and U.S. customers to make order changes up to the date of shipment. According to FET's descriptions, the sales processes in the home market and to the United States are identical. Thus, record

evidence demonstrates that the material terms of sale are not set before the date of invoice, which would normally result in using the date of invoice as the date of sale. *See* 19 CFR 351.401(i). However, because the merchandise is always shipped on or before the date of invoice, we are using the date of shipment as the date of sale. *See Certain Cold–Rolled and Corrosion–Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172–73 (March 18, 1998).

**Export Price**

For sales to the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States, and because constructed export price methodology was not otherwise warranted. We calculated EP based on the cost, insurance and freight (''CIF'') price to unaffiliated purchasers in the United States. Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight - plant to port of exportation, brokerage and handling, harbor service fee, trade promotion fee, international freight, and marine insurance.

**Normal Value**

*A. Selection of Comparison Market*

To determine whether there was a sufficient volume of sales of PSF in the home market to serve as a viable basis for calculating NV, we compared the respondent's home market sales of the foreign–like product to its volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Pursuant to sections 773(a)(1)(B) of the Act, because the respondent's aggregate volume of home market sales of the foreign–like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison.

*B. Level of Trade*

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See* 19 CFR 351.412(c)(2); *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison market sales were made at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[3] we consider the starting prices before any adjustments. *See Micron Technology, Inc. v. United States, et al.*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign–like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

FET reported that it made direct sales to one distributor in the U.S. market and to end users in the home market. FET has reported a single channel of distribution and a single level of trade in each market, and has not requested a LOT adjustment. We examined the information reported by FET regarding the type and level of selling activities performed, and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (i.e., distributors and end users) across the markets. We found a single level of trade in the United States, and a single, identical level of trade in the home market. Thus, it is unnecessary to make an LOT adjustment for FET in comparing EP and home market prices.

*C. Cost of Production Analysis*

Because FET had sales below the cost of production that were disregarded in the original investigation, and the investigation proceeding was FET's most recently completed antidumping duty proceeding, there were reasonable grounds to believe or suspect that the respondent made sales of the merchandise under review in its comparison market at prices below the cost of production (''COP'') within the meaning of section 773(b) of the Act.

*1. Calculation of COP*

We calculated the COP on a product–specific basis, based on the sum of the respondent's costs of materials and fabrication for the foreign–like product, plus amounts for general and administrative (''G&A'') expenses, interest expenses, and the costs of all expenses incidental to placing the foreign–like product packed and in a condition ready for shipment, in accordance with section 773(b)(3) of the Act.

We relied on COP information submitted in FET's cost questionnaire responses, except for the following adjustments:

- We adjusted FET's G&A to disallow gains on investment activities.
- We adjusted FET's reported cost of manufacturing to account for purchases of purified terephthalic acid (''PTA'') and mono ethylene glycol (''EG'') from affiliated parties at non–arm's–length prices in accordance with the major input rule. *See* Memorandum from Laurens van Houten to the File, *Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Far Eastern Textile Limited*, dated May 31, 2007 (''Cost *Calculation Memorandum*''), which is on file in the Department's CRU.
- We noted significant fluctuations in the costs of direct materials reported in FET's cost database due to the time of production (reflecting fluctuations in the prices of the inputs, PTA and EG). To address the resulting distortions to FET's costs, we adjusted the company's reported costs using a weighted–average direct materials cost by

[1] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for CV, where possible.

fiber loft, specialty fiber, and fiber type (*i.e.*, one direct material cost for virgin, and one for each of the blended fiber types). *See Cost Calculation Memorandum*.

*2. Test of Home Market Prices*

On a product–specific basis, we compared the adjusted weighted–average COP figures for the POR to the home market sales of the foreign–like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

*3. Results of COP Test*

We found that, for certain products, more than 20 percent of the respondent's home market sales were at prices less than the COP and, thus, the below–cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we excluded these sales and used the remaining sales of the same product, as the basis for determining NV, in accordance with section 773(b)(1).

*D. Calculation of Normal Value Based on Home Market Prices*

We relied on FET's submitted home market sales information, except for the following adjustments:

- We reclassified some of FET's reported home market rebates as warranty expenses because these rebates were granted to satisfy claims regarding product quality defects. We allocated the total warranty expenses incurred in the home market during the POR across all reported home market sales, including window period sales. *See* Memorandum from Team to the File, *Preliminary Results Calculation Memorandum for Far Eastern Textile Limited*, dated May 31, 2007 (''FET Calculation Memorandum''), which is on file in the Department's CRU.
- We reclassified some of FET's reported home market rebates as indirect selling expenses because these expenses did not relate to any particular sales. *See FET Calculation Memorandum*.
- For the Fiber Type control number matching characteristic, we used FET's breakdown of blended fibers coded as 5, 6, and 7.

We calculated NV based on the price to unaffiliated customers. We made adjustments for packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight from the plant to the customer. In addition, we made adjustments for differences in circumstances of sale (''COS''), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales (*i.e.*, imputed credit expenses and warranties) and adding U.S. direct selling expenses (*i.e.*, imputed credit expenses, actual credit expenses, and bank charges).

**Preliminary Results of the Review**

We find that the following dumping margin exists for the period May 1, 2005, through April 30, 2006:

| Exporter/manufacturer | Weighted–average margin percentage |
|---|---|
| Far Eastern Textile Limited | 0.37 (de minimis) |

**Public Comment**

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

**Assessment Rates**

If these preliminary results are adopted in the final results, we will instruct U.S. Customs and Border Protection (CBP) to liquidate all entries of merchandise produced and exported by FET without regard to antidumping duties.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

**Cash Deposit Requirements**

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PSF from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted–average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less–than–fair–value investigation, the cash deposit rate will continue to be the most recent rate published in the final determination for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 7.31 percent, the ''all others'' rate established in *PSF Orders*.

**Notification to Importers**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–10914 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty–Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Ave., NW, Room 2104, Washington, D.C.20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 2104.

Docket Number: 07–013. Applicant: University of Minnesota, 1987 Upper Buford Circle, St. Paul, MN 55108. Instrument: Carbon monoxide Monitor and Accessories. Manufacturer: AeroLaser, Germany. Intended Use: The instrument is intended to be used for a long–term study to determine the carbon exchange of a suburban landscape by quantifying how much carbon is exchanged between vegetation and the atmosphere and determining the relationship between the flux of carbon monoxide (emissions from combustion from vehicles, home heating, etc.) and the flux of carbon dioxide (from the above sources as well as biological activity such as photosynthesis and microbial respiration). The relationship between the above fluxes will allow quantification of the amount of $CO^2$ due to biological activity as opposed to fossil fuel combustion. The experiment will support field-based, hands–on classes using gigabyte fiber optic real–time data streaming into the classroom. An instrument capable of measuring CO concentration fluctuations with the fastest response time is essential to the project. Application accepted by Commissioner of Customs: March 26, 2007.

Docket Number: 07–016. Applicant: The University of Alabama, 355 Rose Administration, Box 870130, Tuscaloosa, AL 35487–0150. Instrument: Fast–response NOx Analyzer. Manufacturer: Combustion Ltd., UK. Intended Use: The instrument is intended to be used to measure the intra–cycle variation of NOx production and emission. NOx is formed and destroyed in time scales on the order of several milliseconds. The instrument has near ms response (3 ms for NO, and < 10 ms for other oxides of N). This will allow measurement of changes in concentration of NOx within an engine cycle (2 revolutions for a 4–stroke cycle engine) and correlation with other intra–cycle data such as cylinder pressure or temperature. The purpose is to identify and determine mitigation methods of NOx formation in internal combustion engines. Application accepted by Commissioner of Customs: March 28, 2007.

Docket Number: 07–017. Applicant: Stanford University, P.O. Box 20410, Stanford, CA. Instrument: 1.1 Micron Wavelength Fiber Laser, Model: Boostik 5 W. Manufacturer: Koheras A/S, Denmark. Intended Use: The instrument is intended to be used to study broadband propagation through the atmosphere. The experiments include building and testing a point–to-point freespace communication link operating in the 3.8 micron waveband to verify the system design, using parametric frequency conversion of telecom–like sources. It will also be used for graduate student training. A high–power, cw, polarized laser source operating at a wavelength of exactly 1.1 micron is essential. Application accepted by Commissioner of Customs: April 9, 2007.

Docket Number: 07–026. Applicant: Virginia Polytechnic Institute and State University, Institute for Critical Technology and Applied Science, 1880 Pratt Dr., mc 0493, Blacksburg, VA 24061. Instrument: Mass Spectrometer, Model Helios 600 NanoLab. Manufacturer: FEI Company, Eindhoven, The Netherlands. Intended Use: The instrument is intended to be used in a centralized facility for creating and categorizing 3–dimensional structures at the nanometer size scale. It is equipped with an ion–beam column for ion milling, deposition and lithography, and an electron column for high–resolution lithography and imaging. In addition to nanoscale research it will be used for studies of other materials by other departments at the university. Application accepted by Commissioner of Customs: April 23,2007.Docket Number: 07–029. Applicant: University of Washington, Chemistry Department, 36 Bagley Hall, Seattle, WA 98195. Instrument: Femtosecond Laser. Manufacturer: Femtolasers Produktions, GmbH, Austria. Intended Use: The instrument is intended to be used for ultra–fast nonlinear optical far and near–field microscopic investigations of nanoscale physical phenomena of ferroelectric and semiconducting materials. Using near–field second and fourth harmonic generation, the ferroelectric domain ordering of manganites will be studied. These multiferroic materials are of great interest due to their potential for nonvolatile storage devices. Using photon echo and pump probe techniques, the electronic and vibrational properties of semiconductor nanocrystals, particularly CdSe and PdSe, will be used to study the effect of the quantum confinement on the vibronic coupling. A femtosecond laser with with pulse durations of 10 fs and below pulse duration at more than 480 mW power will be necessary for this work. Application accepted by Commissioner of Customs: May 8, 2007.

Docket Number: 07–030. Applicant: Lehigh University, 111 Research Dr., Bethlehem, PA 18015. Instrument: Low Voltage Transmission and Scanning Electron Microscope. Manufacturer: Delong Insruments A.s, Czech Republic. Intended Use: The instrument is intended to be used to detect proteins of interest (actin, synapsin and Rab3a) in nerve terminals. Immunolabeling of these proteins will be performed and the tissue will be processed for transmission electron microscopy and the samples will be examined. This unique TEM operates at a low voltage of 5 kV, which enables obtaining of high–contrast images of non–osmicated samples, which is crucial since osmication cannot be performed together with immunolabeling. The TEM is capable of both fast and gradual changes in magnification which is needed since nerve terminals are not readily found in

the preparations of neuromuscular tissue being examined. Application accepted by Commissioner of Customs: May 9, 2007.

Docket Number: 07–031. Applicant: University of Notre Dame, Fitzpatric Hall, Notre Dame Indiana 46556. Instrument: Surface Roughness Analyzer. Manufacturer: Elionix, Japan. Intended Use: The instrument is intended to be used to study Al and other metal tunnel junctions, microelectromechanical systems (MEMS) related materials such as Al, silicon dioxide and nitride and silicon. New imaging systems for infrared detectors in the form of both nanoantennas and micro–spectrometers will be fabricated. The instrument will be used to image the devices formed at high magnification and also to accurately determine their surface morphology. Measurement of step–coverage of thin metal films with very high resolution is crucial for determining if the nanometer scale, overlapped metal areas are properly formed. The Elionix is essential to the work since it is the only instrument, to their knowledge, that can perform surface roughness analysis using an electron beam. Application accepted by Commissioner of Customs: May 9, 2007.

Docket Number: 07–032. Applicant: University of Missouri, Columbia, Electron Microscopy Core Room W132, Veterinary Medicine Building, 1600 East Rollins St., Columbia, Mo 65211. Instrument: Electron Microscope, Model Quanta 600 FEG. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument is intended to be used in a University Core Research Facility currently serving over 50 principal investigators campus wide. Selective topics will be in the area of nanodevices and microelectronics, nanoenergetic materials, organic LED's and nanocomposites materials; bioremediation of toxic metals and biochemistry of sulphate–reducing bacteria, characterization of biosensors, and many other diverse topics. It will also be used for student training in electron microscopy. Application accepted by Commissioner of Customs: May 15, 2007.

**Faye Robinson,**

*Director, Statutory Import Programs Staff, Import Administration.*

[FR Doc. E7–10905 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–830]**

### Stainless Steel Bar From Italy: Final Results of Expedited Five-Year (''Sunset'') Review of the Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 1, 2007, the Department of Commerce (''the Department'') published in the **Federal Register** the notice of initiation of the five-year sunset review of the countervailing duty order on stainless steel bar (''SSB'') from Italy, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Reviews*, 72 FR 4689 (February 1, 2007) (''*Sunset Review*''). The Department has conducted an expedited sunset review of this order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the ''Final Results of Review'' section of this notice.

**DATES:** *Effective Date:* June 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Audrey R. Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–3534 or (202) 482–0182, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 1, 2007, the Department initiated this sunset review of the countervailing duty order on SSB from Italy, pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 72 FR 4689 (February 1, 2007). The Department received the Notice of Intent to Participate from Carpenter Technology Corp.; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers of a domestic-like product in the United States.

On February 28, 2007, the Department received a complete substantive response to the notice of initiation from the Delegation of the European Commission (''EC''). On March 1, 2007, the Department received a complete substantive response from Cogne Acciai Speciali S.r.l. (''CAS''), a foreign producer and exporter of subject merchandise during this review. On March 5, 2007, the Department received complete substantive responses from the domestic interested parties and from the Government of Italy (''GOI''). CAS claimed interested party status under section 771(9)(A) as a foreign producer and exporter of the subject merchandise. The GOI and EC expressed their intent to participate in this review as the authorities responsible for defending the interests of the Italian industry.

We find that CAS accounted for less than 50 percent of the exports to the United States by companies subject to this order, the level that the Department normally considers to be an adequate response to the notice of initiation by respondent interested parties under 19 CFR 351.218(e)(1)(ii)(A). In addition, a government response alone, normally, is not sufficient for full sunset reviews in which the orders are not done on an aggregate basis. *See*, *e.g.*, *Final Results of Expedited Sunset Reviews of Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium from Canada*, 70 FR 67140 (November 4, 2005). Therefore, we conducted an expedited (120-day) sunset review of the CVD order on stainless steel bar from Italy as provided for at section 751(c)(3)(B) of the Act and at section 351.218(e)(1)(ii)(C)(2) of the Department's regulations. *See* Memorandum from Damian Felton to Susan Kuhbach entitled, ''Adequacy Determination: Sunset Review of the Countervailing Duty Order on Stainless Steel Bar from Italy'' (March 23, 2007). On April 12, 2007, we received a letter from domestic interested parties stating that they agree with the Department's decision to conduct an expedited review of this order.

On March 12, 2007, the domestic interested parties filed a rebuttal to the substantive responses of CAS, the GOI, and the EC. CAS, the GOI, and the EC did not file rebuttals. The Department did not conduct a hearing because a hearing was not requested.

**Scope of the Order**

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Analysis of Comments Received**

All issues raised in substantive responses by parties in this sunset review are addressed in the ''Issues and Decision Memo for the Expedited Sunset Review of the Countervailing Duty Order on Stainless Steel Bar from Italy; Final Results,'' (''Decision Memo''), from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 1, 2007, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of a countervailable subsidy, the net countervailable subsidy rate likely to prevail if the order were revoked, and the nature of the subsidies.

Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendation in this public memorandum which is on file in B–099, the Central Records Unit, of the main Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Department's Web page at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

**Final Results of Review**

The Department determines that revocation of the countervailing duty order on SSB from Italy is likely to lead to continuation or recurrence of countervailable subsidies at the following countervailing duty rates:

| Manufacturer/exporter | Net subsidy rate (percent) |
|---|---|
| Cogne Acciai Speciali S.r.l ..... | 1.57 |
| All Others ..... | 12.93 |

**Notification Regarding Administrative Protective Orders**

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(c), 752, and 777(i) of the Act.

Dated: May 31, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

[FR Doc. E7–10908 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Omnibus Notice for Compliance of National Marine Fisheries Service Permits With the Debt Collection Improvement Act of 1996

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

*Statutory Authorities:*

Paperwork Reduction Act of 1995, 5 CFR Chapter III, Part 1320.

Debt Collection Improvement Act of 1996, 31 U.S.C. 7701.

**SUPPLEMENTARY INFORMATION:** All NOAA National Marine Fisheries Service (NMFS) permit forms not currently requiring Tax Identifying Numbers (Employer ID Number and/or Social Security Number; and Date of Incorporation and/or Date of Birth) will be revised to require this information, following the procedures of the Paperwork Reduction Act. This notice applies to all NMFS permits information collections for which rulemaking is not needed in conjunction with such revisions. Proposed rules will be issued for all collections whose regulations require amendment for such revisions. The primary purpose for requiring this information is to comply with the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 7701.

This notice applies to the following NOAA NMFS permit collections—

*OMB Control Numbers:*

1. 0648–0272, Alaska Individual Fishing Quotas (IFQs) for Pacific Halibut, Sablefish, and Crab;

2. 0648–0334, Alaska License Limitation Program for Groundfish, Crab, and Scallops;

3. 0648–0398, Alaska Individual Fishing Quota Cost Recovery Program Requirements;

4. 0648–0514, Alaska Region BSAI Crab Permits;

5. 0648–0545, Alaska Rockfish Pilot Program; 0648–203, Northwest Region Federal Fisheries Permits;

6. 0648–0399, Limits on Applications of Take Prohibitions (Threatened Salmonids);

7. 0648–0402, Application and Reports for Scientific Research and Enhancement Permits under the Endangered Species Act;

8. 0648–0463, Pacific Islands Region Coral Reef Ecosystems Permit Form;

9. 0648–0490, Pacific Islands Region Permit Family of Forms;

10. 0648–0471, Highly Migratory Species Scientific Research Permits, Exempted Fishing Permits, and Letters of Authorization; and

11. 0648–0293, Application for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

All but four of these eleven permit collections currently require some or most of this information.

The primary purpose of these revisions is to bring NMFS into compliance with the Debt Collection Improvement Act (DCIA) of 1996, 31 U.S.C. Section 7701. This action is in line with the Department of Commerce Interim Final Rule 0648–AA24 (April 16, 2007), which revises and replaces Department of Commerce debt collection regulations to conform to the DCIA.

In addition, this action will add to the developing consistency of permit requirements across NMFS regions and divisions, ultimately reducing the public's burden in completing these forms (a significant number of vessels fish in more than one region or division).

This action will add no burden or cost to the public. There should be no research or retrieval required for any of the information. As the information will be added to existing forms, no additional transmission costs will be incurred.

**DATES:** Written comments must be submitted on or before August 6, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these information collections; they also will become a matter of public record.

Dated: May 31, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–10870 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Tag Recapture Card

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 6, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Eric S. Orbesen, 800–437–3936 or *Eric.Orbesen@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The primary objectives of a tagging program are to obtain scientific information on fish growth and movements necessary to assist in stock assessment and management. This is accomplished by the random recapture of tagged fish by fishermen and the subsequent voluntary submission of the appropriate data.

#### II. Method of Collection

The recapture cards will be sent out to the constituents who will fill in the cards with the pertinent information when and if they recapture a tagged fish and mail the cards back to our offices.

#### III. Data

*OMB Number:* 0648–0259.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 30.

*Estimated Time per Response:* 2 minutes.

*Estimated Total Annual Burden Hours:* 1.

*Estimated Total Annual Cost to Public:* $0.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 31, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–10875 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Pacific Tuna Fisheries Logbook

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before August 6, 2007.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov.*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Trisha Culver, 562–980–4239 or *trisha.culver@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

United States participation in the Inter-American Tropical Tuna Commission (IATTC) results in certain recordkeeping requirements for U.S. fishermen who fish in the IATTC's area of management responsibility. These fishermen must maintain a log of all operations conducted from the fishing vessel, including the date, noon position, and the tonnage of fish aboard the vessel, by species. The logbook form provided by the IATTC is universally used by U.S. fishermen to meet this recordkeeping requirement, as permitted by the regulations. The information in the logbooks includes areas and times of operation, and catch and effort by area. Logbook data are used in stock assessments and other research concerning the fishery. If the data were not collected or if erroneous data were provided, the IATTC assessments would likely be incorrect and there would be an increased risk of overfishing or inadequate management of the fishery.

### II. Method of Collection

Vessel operators maintain bridge logs on a daily basis, and the forms are either mailed to the IATTC or to the National Marine Fisheries Service at the completion of each trip. The data are processed and maintained as confidential by the IATTC.

### III. Data

*OMB Number:* 0648–0148.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Individuals or households, business or other for-profit organizations.
*Estimated Number of Respondents:* 20.
*Estimated Time per Response:* 5 minutes.
*Estimated Total Annual Burden Hours:* 129.
*Estimated Total Annual Cost to Public:* $0.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 31, 2007.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. E7–10876 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA62**

### Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a request to conduct experimental fishing; request for comments.

**SUMMARY:** This exempted fishing permit (EFP) application is a continuation of a collaborative project involving the University of New Hampshire (UNH), Durham, NH; the Lobster Conservancy, Friendship, Maine; the New England Aquarium, Boston, MA; and the Atlantic Offshore Lobstermen's Association, Candia, NH. The EFP proposes to continue monitoring legal sized egg bearing female lobsters (berried lobsters) carrying early-stage eggs. The continuation of this project will allow participating Federal lobster permit holders, fishing in designated study areas, to preserve a maximum of ten eggs from each berried lobster captured in commercial lobster gear, to allow researchers to determine what percentage of eggs are fertilized, and estimate the egg developmental stage and time to maturity. The berried lobsters will then be released unharmed. This project would not involve the authorization of any additional trap gear, and all trap gear would conform to existing Federal lobster regulations. There would be no anticipated adverse effects on protected resources or habitat as a result of this research. The EFP would waive the prohibition on removal of eggs for a maximum of 13 participating vessels. The Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that the activities authorized under the EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. NMFS announces that the Office Director proposes to issue EFPs and, therefore, invites comments on the issuance of EFPs for this research.

**DATES:** Comments on this lobster EFP notification for berried lobster monitoring and data collection must be received on or before June 21, 2007.

**ADDRESSES:** Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope ''Comments - Lobster EFP Proposal''. Comments also may be sent via facsimile (fax) to 978–281–9117, or by e-mail to *LobsterMay2007@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments - Lobster EFP Proposal''.

**FOR FURTHER INFORMATION CONTACT:** Bob Ross, Fishery Management Specialist, (978) 281–9234, fax (978)-281–9117.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is one of the most valuable fisheries in the northeastern United States. In 2005, approximately 87 million pounds (39,712 metric tons) of American lobster were landed with an ex-vessel value of approximately 414 million dollars. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobster are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations, established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

American lobster experience very high fishing mortality rates throughout their range, from Canada to Cape Hatteras, North Carolina. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. To facilitate the development of effective management tools, extensive monitoring and detailed data on the biology and composition of lobsters throughout the range of the resource are necessary. To facilitate effective management, this proposed EFP would monitor egg growth and development of berried lobsters in three study areas using traditional lobster trap gear.

**Proposed EFP**

The EFP proposes to continue the collection of statistical and scientific information as part of a project, originally announced in the **Federal Register** on October 21, 2004 (69 FR 19165), that is designed to monitor berried lobsters to collect data that will assist in the assessment of the lobster resource and in the development of management practices appropriate to the fishery. Previous data collected in 2005 and 2006 from tagged berried lobsters that were monitored for egg-development stages, indicated a percentage of berried females are carrying eggs that are not fertilized. This continuation of the research will focus on quantifying fertilization success, and monitor egg growth and development.

Each of the maximum of 13 commercial fishing vessels in possession of Federal lobster permits involved in this monitoring and data collection program would collect a maximum of ten eggs from each berried lobster harvested, up to a maximum of 50 berried lobster per vessel, using traditional lobster trap gear. Removal of a maximum of ten eggs from each berried lobster should have no impact on the health or survival of the lobsters, since lobsters typically experience significantly greater rates of daily egg loss throughout their 13-month incubation period, with cumulative egg loss as high as 36 percent. Participating vessels would collect data from each of the three general study areas in the vicinity of Portsmouth, NH, the northern edge of Georges Bank, and in the vicinity of Veatch and Hydrographer Canyons along the southern edge of Georges Bank. The participating vessels may retain on deck egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting a maximum of ten eggs from each berried lobster to allow researchers to determine what percentage of eggs are fertilized, and to estimate the egg developmental stage, and time to maturity. All berried lobsters would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(b)(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This project would not involve the authorization of any additional lobster trap gear. All traps fished by the participating vessels would comply with all applicable lobster regulations specified at 50 CFR part 697. To allow for the removal of a maximum of ten eggs from each berried lobster, the EFP would waive the American lobster prohibition on removal of eggs specified at 50 CFR 697.7(c)(1)(iv). All sample collections would be conducted by a maximum of 13 federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel.

This project, including the lobster handling protocols, was initially developed in consultation with UNH scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 31, 2007.

**James P. Burgess**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–10765 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Meeting: Climate Change Science Program (CCSP) Product Development Committee (CPDC) for Synthesis and Assessment Product 3.3

**AGENCY:** Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of open meeting.

**SUMMARY:** The Climate Change Science Program (CCSP) Product Development Committee for Synthesis and Assessment Product 3.3 (CPDC–S&A 3.3) was established by a Decision Memorandum dated October 17, 2006. CPDC–S&A 3.3 is the Federal Advisory Committee charged with responsibility to develop a draft Synthesis and Assessment Product that addresses CCSP Topic 3.3: ''Weather and Climate Extremes in a Changing Climate''.

*Place:* The meeting will be held at the Aspen Global Change Institute, 100 East Francis St. Aspen, Colorado, 81611.

*Time and Dates:* The meeting will convene at 4 p.m. on Monday, June 25, 2007 and adjourn at 5:30 p.m. on Thursday, June 28, 2007. Meeting information will be available online on the CPDC–S&A 3.3 Web site (*http://*

*www.climate.noaa.gov/index.jsp?pg=./ccsp/33.jsp*). Please note that meeting location, times, and agenda topics described below are subject to change.

*Status:* The meeting will be open to public participation and will include a 30-minute public comment period on June 25 from 4 p.m. to 4:30 p.m. (check Web site to confirm this time and the room in which the meeting will be held). The CPDC–S&A 3.3 expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received by the CPDC–S&A 3.3 Designated Federal Official (DFO) by June 18, 2007 to provide sufficient time for review. Written comments received after June 18 will be distributed to the CPDC–S&A 3.3, but may not be reviewed prior to the meeting date. Seats will be available to the public on a first-come, first-served basis.

*Matters to be Considered:* The meeting will (1) formulate responses to the published NRC review report on the First Draft of Synthesis and Assessment Product 3.3 and revise the First Draft accordingly; (2) finalize plans for completion and submission of the Second Draft of Synthesis and Assessment Product 3.3 to the Climate Change Science Program Office for the public comment period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Christopher D. Miller, CPDC–S&A 3.3 DFO and the Program Manager, NOAA/OAR/Climate Program Office, Climate Change Data and Detection Program Element, 1315 East-West Highway, Room 12239, Silver Spring, Maryland 20910; telephone 301–734–1241, e-mail: *Christopher.D.Miller@noaa.gov.*

Dated: May 31, 2007.

**Terry Bevels,**

*Deputy Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 07–2801 Filed 6–1–07; 10:21 am]

**BILLING CODE 3510–KB–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[XRIN: 0648–XA66]**

### Western Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings and hearings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold its 138th meeting to consider and take actions on fishery management issues in the Western Pacific Region.

**DATES:** The 138th Council meeting and public hearings will be held on June 19 - 22, 2007. For specific times and the agenda, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** The 138th Council meeting and public hearings will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814–4722; telephone: (808) 955–4811.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** In addition to the agenda items listed here, the Council will hear recommendations from other Council advisory groups. Public comment periods will be provided throughout the agenda. The order in which agenda items are addressed may change. The Council will meet as late as necessary to complete scheduled business.

*Schedule and Agenda for Council Standing Committee Meetings*

**Tuesday, June 19, 2007**

*Standing Committee*

1. *9 a.m. - 11 a.m.* - Marianas Archipelago Ecosystem Standing Committee
2. *9 a.m. - 11 a.m.* - Hawaii Archipelago Ecosystem Standing Committee
3. *11 a.m. - 12:30 p.m.* - American Samoa Archipelago Ecosystem Standing Committee
4. *1:30 p.m. - 3:30 p.m.* - Pelagics and International Ecosystem Standing Committee
5. *3:30 p.m. - 5 p.m.* - Program Planning/Research Standing Committee
6. *3:30 p.m. - 5 p.m.* - Executive/Budget Standing Committee

The agenda during the full Council meeting will include the items listed here.

*Schedule and Agenda for Council Meeting*

**Wednesday, June 20, 2007, 9 a.m. - 9 p.m.**

1. Introductions
2. Approval of Agenda
3. Approval of 137th Meeting Minutes
4. Agency Reports
   A. NMFS
   1. Pacific Islands Regional Office (PIRO)
   2. Pacific Islands Fisheries Science Center (PIFSC)
   B. NOAA General Counsel
   C. United States Fish and Wildlife Service (USFWS)
5. Mariana Archipelago
   A. Island Area Reports
   1. Commonwealth of the Northern Mariana Islands (CNMI)
   2. Guam
   B. Enforcement Reports
   1. CNMI Enforcement Agency Report
   2. Guam Enforcement Agency Report
   3. United States Coast Guard (USCG) Enforcement Report
   4. NMFS Office for Law Enforcement (OLE) Report
   5. Status of Violations
   C. CNMI Marine Conservation Plan (MCP)
   D. Mariana Community Initiatives and New Issues
   E. Education and Outreach Initiatives
   F. Scientific and Statistical Committee (SSC) Recommendations
   G. Standing Committee Recommendations
   H. Public Comment
   I. Council Discussion and Action
6. American Samoa Archipelago
   A. Island Area Reports
   B. Enforcement Reports
   1. Agency Enforcement Report
   2. U.S.C.G. Enforcement Report
   3. NMFS OLE Report
   4. Status of Violations
   C. Report on American Samoa Longline Workshop
   D. Education and Outreach Initiatives
   E. Advisory Panel (AP) Recommendations
   F. Regional Ecosystem Advisory Committee (REAC) Report
   G. SSC Recommendations
   H. Standing Committee Recommendations
   I. Public Comment
   J. Council Discussion and Action
7. Hawaii Archipelago and Pacific Remote Island Areas (PRIA)
   A. Main Hawaiian Islands (MHI) Bottomfish (ACTION ITEM)
   1. Report on MHI Bottomfish Working Groups and Meetings
   a. Public Meetings
   b. Agency Workshop, Working Groups and Outreach
   c. Enforcement Training and Compliance Workshop
   2. Seasonal Closure, Total Allowable Catch (TAC), Permits and Reporting
   3. Permits and Reporting Details
   4. Federal Recreational Bag Limits
   5. Inclusion of State of Hawaii Bottomfish Restricted Fishing Areas (BRFA) in Federal Waters

B. Risk Analysis of Potential TAC
C. Updated Analysis of State of Hawaii Division of Aquatic Resources (HDAR) Survey of Bottomfish Registered Vessel Owners
D. AP Recommendations
E. SSC Recommendations
F. Standing Committee Recommendations
G. Public Hearing
H. Council Discussion

**Thursday, June 21, 2007, 9 a.m. - 5 p.m.**

7. Hawaii Archipelago and PRIA (Continued)
I. Island Area Reports
J. Enforcement Reports1. Agency Enforcement Report
2. U.S.C.G. Enforcement Report
3. NMFS OLE Report
4. Status of Violations
K. Precious Corals
1. Potential for Auau Limited Entry (ACTION ITEM)
2. Precious Corals Plan Team Report
L. Hawaii Community Initiatives
1. Hoohanohano I Na Kupuna Puwalu IV Report
2. Report on Development of Hawaii Community Development Program
3. Legislative Actions
M. Education and Outreach Initiatives
N. AP Recommendations
O. REAC Report
P. SSC Recommendations
Q. Standing Committee Recommendations
R. Public Hearing
S. Council Discussion and Action
8. Pelagic and International Fisheries
A. Longline Management
1. Longline Tuna TAC Framework (ACTION ITEM)
2. Guam Longline Area Closure (ACTION ITEM)
3. Status of Hawaii Longline Association Swordfish Proposal
B. Non-longline fisheries
1. Recreational Fisheries
a. Recreational fishery registration
b. Ad-hoc Recreational Fisheries Data Task Force Meeting
2. Hawaii-based Pelagic Vessels Non-Longline, Non-Purse-Seine Limited Entry (ACTION ITEM)
C. Status of Amendment 14 to the Pelagics Fishery Management Plan
D. American Samoa and Hawaii Longline Quarterly Reports
E. International Fisheries
1. ISC Bycatch Working Group
2. Inter-American Tropical Tuna Commission (IATTC) Stock Assessment Working Group
3. Western and Central Pacific Fisheries Commission (WCPFC), Third Science Committee Meeting Agenda and Risk Assessment Workshop Report
4. WCPFC Implementing Actions
5. Secretariat for the Pacific Community (SPC)/Papua New Guinea Tuna Tagging
F. Pelagic Plan Team Recommendations
G. AP Recommendations
H. SSC Recommendations
I. Standing Committee Recommendations
J. Public Hearing
K. Council Discussion and Action

**Friday, June 22, 2007, 9 a.m. - 5 p.m.**

9. Program Planning
A. Update on Use of State of Hawaii Disaster Relief Funds
B. Fishery and Seafood Marketing Development
C. Using Local Names for non-Local Fish
D. Status of Fishery Management Actions
E. Social Science Research Committee Report
F. Report on Magnuson-Stevens Reauthorization Act (MSRA)
1. Annual Catch Limit Guidance
2. Marine Training and Education Program
G. Report on Regulatory Streamlining Workshop
H. New Program Initiatives from AP and REAC
I. SSC Recommendations
J. Standing Committee Recommendations
K. Public Comment
L. Council Discussion and Action
10. Administrative Matters & Budget
A. Financial Reports
B. Administrative Reports
C. Meetings and Workshops
D. Council Family Changes
1. Advisory Group Changes
2. REAC Membership
E. Council Committee Assignments
F. Standing Committee Recommendations
G. Public Comment
H. Council Discussion and Action
11. Other Business
A. Next Meeting

**BACKGROUND INFORMATION**

*1. MHI bottomfish (ACTION ITEM)*

NMFS determined that overfishing of the bottomfish species complex was occurring within the Hawaiian Archipelago with the primary problem being excess fishing mortality in the main Hawaiian Islands. The NMFS Regional Administrator for the Pacific Islands Regional Office notified the Western Pacific Regional Fishery Management Council of this overfishing determination on May 27, 2005.

In response, the Council prepared and transmitted to NMFS in May 2006, an amendment to the Bottomfish Fishery Management Plan (FMP), which recommended closure of federal waters around Penguin and Middle Banks to bottomfish fishing to end the overfishing Before that recommendation was processed by NMFS, however, an updated stock assessment was completed by NMFS' Pacific Islands Fisheries Science Center in 2006 which concluded the required reduction in fishing mortality based on 2004 data would be 24 percent. This new information indicated a need for the Council to re-examine this action which was done.

Therefore, to end bottomfish overfishing based on the most recent data, the Council is recommending amending the Bottomfish FMP using a phased approach. The 24 percent reduction would be achieved in 2007 and 2008 through the use of seasonal closures in conjunction with limits on total allowable catches (TACs). As fishery monitoring improves, overfishing would be prevented in 2009 and beyond through implementation of TACs based on, and applied to, the commercial and the recreational sectors.

Tracking of commercial landings towards the TAC would begin when the fishery reopens on October 1, 2007. During the open period, recreational catches would continue to be managed by bag limits, however they would be changed from the current five onaga and/or ehu combined per person per trip, to five of any Deep 7 species combined per person per trip and they would be extended into Federal waters to ease enforcement. Once commercial Deep 7 landings reached the TAC, both the commercial and recreational sectors would be closed. Phase 2 includes a Federal permit requirement for recreational fishermen who catch Deep 7 in the MHI.

The Council will also consider implementing Federal reporting requirements for recreational fishermen who target or catch bottomfish management unit species (BMUS) in the MHI. This would provide fishery scientists with the data needed to calculate and track a recreational portion of the overall TAC.

In 2008, the second seasonal closure to MHI Deep 7 fishing will be from May August 2008, followed by implementation of a combined commercial and recreational Deep 7 TAC beginning September 1, 2008. The recreational bag limits would be eliminated.

In subsequent years, 2009 and beyond, the MHI Deep 7 fishery would be managed via a commercial and

recreational TAC calculated by PIFSC to prevent overfishing of these species.

At its 138th meeting, the Council will take final action on these recommendations, as well as on a series of related implementation details.

The Council will also consider whether inclusion of State of Hawaii's Bottomfish Restricted Fishing Areas in Federal waters is consistent with the Bottomfish FMP.

*2. Potential for Auau Channel limited entry (ACTION ITEM)*

Research has revealed that the biomass of the black coral populations has decreased by at least 25% in the last 30 years. Stringent measures were recommended by scientists and the Council's Precious Corals Plan Team to conserve the black coral resource in the Auau Channel. In response the Council has recommended removing an exemption that allowed certain fishermen to harvest black coral at a slightly smaller minimum size than non-exempted fishermen. This is expected to provide a longer period of recruitment. The Council has also recommended the designation of the Auau Channel as an established bed with an associated harvest quota that would be applicable to both State and Federal waters. This is intended to ensure that harvests are limited and that the fishery is sustainably managed. Although the Council has recommended several regulatory changes to address this problem, a limited access program may provide an additional safeguard to ensure that harvests are limited and that the fishery is sustainably managed.

Based on a recommendation from the Precious Corals Plan Team, the Council is now considering creating a limited entry system for the black coral fishery in Federal waters of the Auau Channel. Limiting participation in the fishery would allow fishery managers and enforcement officers to more tightly monitor harvests to ensure that the quota is not exceeded. There are currently less than three commercial black coral fishing operations active within the State and Federal waters that encompass the Auau Channel black coral bed. There are no known non-commercial operations.

The following alternatives are being proposed:

*Alternative 1*: No Action.

Under this alternative participation in the black coral fishery would continue to be open to all applicants.

*Alternative 2*: Limit access to current black coral fishery participants via transferable limited access permits.

Under this alternative participation in the portion of the Auau Channel black coral fishery located in Federal waters would initially be limited to those participants who are currently active in this fishery. When these participants were ready to leave the fishery, they could transfer their permits by sale, trade or gift to new participants. However the total number of participants would be capped at current levels.

*Alternative 3*: Limit participation to a target number of participants via transferable limited access permits.

Under this alternative participation in the portion of the Auau Channel black coral fishery located in Federal waters would be limited to a target number of participants. The appropriate target has not been determined but would be calculated based on the area's productivity, typical fishing operating patterns, and social and economic considerations. The target number of participants could be less than, equal to, or greater than the number of currently active participants. When these participants were ready to leave the fishery, they could transfer their permits by sale, trade or gift to new participants.

*Alternative 4*: Limit participation to currently active participants via non-transferable limited access permits and close the Federal portion of the fishery when these participants retire.

Under this alternative participation in the portion of the Auau Channel black coral fishery located in Federal waters would be limited to those currently active participants. When these participants leave the fishery, their permits would be retired and no new entrants would be permitted to enter this portion of the fishery.

At its 138th meeting in Honolulu, HI, the Council may take action on this issue in regards to the fisheries of the Hawaiian archipelago and may make a recommendation for management of the black coral fishery of the Auau Channel, Hawaii.

*3. Longline tuna TAC framework (ACTION ITEM)*

At its 138th meeting, the Council may take final action to adjust the framework process within the Pelagics Fishery Management Plan (PFMP) to allow for the implementation of longline catch limits stemming from the decisions of the two Pacific tuna Regional Fishery Management Organizations (RFMOs).

International management and conservation of bigeye tuna in the Pacific is the responsibility of the Western and Central Pacific Fishery Commission (WCPFC) and the Inter-American Tropical Tuna Commission (IATTC). The two Pacific tuna RFMOs have already implemented limits on fleet-wide catches of bigeye tuna by longline vessels, and it is likely that further measures may also be applied to other tunas caught by longliners. Currently, there is no mechanism by U.S. catch limits established by an RFMO can be efficiently implemented through the Magnuson-Stevens Act (MSA) process by the Western Pacific Council.

An amendment to the PFMP typically requires approximately one year for the completion of necessary documentation, analysis Secretarial review and approval, and implementation. Pacific RFMO tuna harvest limits are likely to change annually, based on the results of stock assessments and other changes in the fishery. Timely domestic implementation of catch limits stemming from the tuna RFMOs will require that abbreviated background work and documentation be prepared in advance of RFMO decisions. The framework process is designed for this situation. Under this process the Council will prepare and review analyses of anticipated impacts of a likely range of catch limits. This analysis will then be used by the Council to accept or modify the RFMO decisions under the MSA. All analyses will be subject to public review and comment, as will any proposed rule resulting from this process.

At its 137th meeting, the Council endorsed an alternative to modify the framework process in the PFMP to give the Council the ability to implement catch limits for the harvesting of pelagic fish by longline vessels. Implicit in this recommendation was that additional analysis of impacts would heed advice from the Council's SSC that observer data between Eastern Pacific Ocean (EPO) and Western and Central Pacific Ocean (WCPO) be disaggregated for the Hawaii longline fishery, and that swordfish and tuna longline fisheries catch rates between the EPO and WCPO be similarly disaggregated. This was suggested in order to more precisely estimate the expected range of tuna catches and their impacts on the environment.

*4. Guam longline area closure (ACTION ITEM)*

Until recently, longlining has not been conducted by U.S. vessels based out of ports in the Mariana Islands (Guam and the Commonwealth of the Northern Mariana Islands). In 2006, however, the Guam Fishermen's Cooperative (GFC) began operating a longline vessel, fishing primarily within the U.S. EEZ around Guam using a 50ft fishing vessel converted to longlining through assistance from the Council's

Community Demonstration Project Program (CDPP). The primary function of the vessel is to operate in a training capacity to train Guam fishermen to longline fish. Most fishermen have no experience in offshore, multi-day fishing trips or with using longline gear.

However, the operations of the GFC vessel are constrained within the U.S. EEZ around Guam due to a 50 nautical mile exclusion zone for longline and purse seine vessels around the island of Guam and its offshore banks, implemented in 1992 through Amendment 5 to the Pelagics Fishery Management Plan (PFMP). In 1992, there was no domestic Guam longline fishery but troll fishermen in Guam were concerned about unrestricted growth of longlining by U.S. vessels from outside the territory following the expansion of the Hawaii longline fishery after 1987. In response to these concerns, the Council recommended in1990 the implementation of the 50 nm closures around Guam and its offshore banks in September. The Council also established a control date of December 6, 1990 control date for entry into longline fishery, although this date is now redundant.

The original concerns about expansion of U.S. longline fishing home-ported out of Guam through vessels migrating from other parts of the U.S. now appear to be unfounded. As such, the area closures developed in the early 1990s may now be an unnecessary impediment to the continued growth of 'domestic' longlining on Guam. However, troll fishermen on Guam still wish to see some form of protection from gear conflict with longline fishing, especially some form of area closure around the offshore banks, from where about one third of fishing trips are conducted.

At its 137th meeting, the Council supported continued development of longline closed area in Guam which would encompass the locally designated White Tuna Banks, an area of importance to Guam's troll fishermen. Subsequently, a total of seven alternatives have been analyzed by the Council:

1. No action
2. Community Development Progam
3. Exploratory Fishing Permit
4. Reduce the longline exclusion zone to a uniform 25 nm around Guam
5. Modify the existing longline area closure to exclude only vessels over a certain size class
6. Seasonal reduction in the longline exclusion zone around Guam

The analysis of the seven alternatives in the draft amendment document looks at the impacts of longline fishing, primarily on the existing troll fishery on Guam, on protected and sensitive species and fishery participants and the fishing community on Guam. In the absence of longline fishery data from the GFC vessel, a proxy model was developed based on deep set tuna longline fishing by domestic longliners in the Federated States of Micronesia, coupled with observer data from the SPC for this type of fishery. This proxy was then used to look at longline catches at low and moderate levels of fishing effort associated with training fishermen and a high level of effort consistent with a commercial operation. The Council may take final action at the 138th meeting and select a preferred alternative for modifying the current longline closed area in the U.S. EEZ around Guam.

*5. Hawaii-based Pelagic Vessels Non-longline, Non-purse seine limited entry (ACTION ITEM)*

At its 137th meeting, the Council recommended that the potential for a limited entry program be investigated for the Hawaii charter vessel fishery. This recommendation stemmed from the ongoing and planned expansion of small boat harbors in Hawaii which may afford greater number of charter vessels to operate from Hawaii and Oahu. Catch and effort data from both locations shows that over a 20 year time span catch rates for blue marlin have declined by about 50–60%, while effort has increased, particularly in recent years. As a consequence of this recommendation, a control rule was published for the fishery dated May 11, 2007, after which new entrants are not guaranteed future participation.

The Council may also wish to consider whether it wished to limit entry for other non-longline coastal pelagic fisheries (NLCPs). Among the reasons for considering such action are new language in the Magnuson-Stevens Reauthorization Act (MSRA) requiring Councils to set Annual Catch Limits (ACLs) for federally managed fisheries. ACLs were designated in the MSRA as another measure to ensure that stocks are not overfished. Moreover, conservation measures for bigeye and yellowfin tuna stemming from the Western and Central Pacific Fishery Commission (WCPFC) are increasingly focusing on fisheries other than purse seining and longline fishing, and may in the future require data on these fisheries and possible limits on catches. Consequently at the 138th meeting, the Council may consider limiting entry for NLCPs beyond charter vessels.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

**Authority:** 16 U.S. C. 1801 *et seq.*

Dated: June 1, 2007.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E7–10830 Filed 6–5–07; 8:45 am]

**BILLING CODE 3510–22–S**

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Cribs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the February 12, 2007 **Federal Register** (72 FR 6535), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of information collection requirements in the safety regulations for non-full-size cribs. 16 CFR 1500.18(a)(14) and part 1509. Joint comments in support of the information collection were submitted by the Consumer Federation of America, Consumers Union, Kids in Danger and Keeping Babies Safe, Inc. Commentors state that the ability of the Commission to better communicate news of recalls to retailers and individuals is critical to removing potentially dangerous cribs and the continued collection of information may assist in that effort.

The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with non-full-size cribs. The regulations prescribe performance, design, and labeling requirements for non-full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of non-full-size cribs. If any non-full-size cribs subject to provisions of 16 CFR 1500.18(a)(14) and part 1509 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. OMB previously approved the collection of information under control number 3041–0012. OMB's most recent extension of approval will expire on September 30, 2007.

**Additional Information About the Request for Extension of Approval of Information Collection Requirements**

*Agency address:* Consumer Product Safety Commission, Washington, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Recordkeeping Requirements Under the Safety Regulations for Non-Full-Size Baby Cribs, 16 CFR 1509.12.

*Type of request:* Extension of approval.

*Frequency of collection:* Varies, depending upon volume of products manufactured, imported, or sold.

*General description of respondents:* Manufacturers and importers of non-full-size cribs.

*Estimated number of respondents:* 16.

*Estimated average number of responses per respondent:* 1 per year.

*Estimated number of responses for all respondents:* 16 per year.

*Estimated number of hours per response:* 5.

*Estimated number of hours for all respondents:* 80 per year.

*Estimated cost of collection for all respondents:* $3,600.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by July 6, 2007 to the (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

Dated: May 31, 2007.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E7–10794 Filed 6–5–07; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Extension of Approval of Information Collection Requirements—Safety Standard for Bicycle Helmets

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the February 12, 2007 **Federal Register** (72 FR 6535), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of the collection of information in the safety standard for bicycle helmets (16 CFR part 1203). These regulations establish testing and recordkeeping requirements for manufacturers and importers of bicycle helmets subject to the standard. No comments were received in response to the notice. The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information for a period of three years from the date of approval.

**SUPPLEMENTARY INFORMATION:** In 1994, Congress passed the ''Child Safety Protection Act,'' which, among other things, included the ''Children's Bicycle Helmet Safety Act of 1994'' (Pub. L. 103–267, 108 Stat. 726). This law directed the Commission to issue a final standard applicable to bicycle helmets that would replace several existing voluntary standards with a single uniform standard that would include provisions to protect against the risk of helmets coming off the heads of bicycle riders, address the risk of injury to children, and cover other issues as appropriate. The Commission issued the final bicycle helmet standard in 1998. It is codified at 16 CFR part 1203.

The standard requires all bicycle helmets manufactured after March 10, 1999, to meet impact-attenuation and other requirements. The standard also contains testing and recordkeeping requirements to ensure that bicycle helmets meet the standard's requirements. Certification regulations implementing the standard require manufacturers, importers, and private labelers of bicycle helmets subject to the standard to (1) Perform tests to demonstrate that those products meet the requirements of the standard, (2) maintain records of those tests, and (3) affix permanent labels to the helmets stating that the helmet complies with the applicable standard. The certification regulations are codified at 16 CFR part 1203, Subpart B.

The Commission uses the information compiled and maintained by manufacturers, importers, and private labelers of bicycle helmets subject to the standard to help protect the public from risks of injury or death due to head injury associated with bicycle riding. More specifically, this information helps the Commission determine whether bicycle helmets subject to the standard comply with all applicable requirements. The Commission also uses this information to obtain corrective actions if bicycle helmets fail to comply with the standard in a manner that creates a substantial risk of injury to the public. OMB previously approved the collection of information under control number 3041–0127. OMB's most recent extension of approval will expire on October 31, 2007.

**Additional Information About the Request for Extension of Approval of Information Collection Requirements**

*Agency address:* Consumer Product Safety Commission, Washington, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Safety Standard for Bicycle Helmets (16 CFR part 1203).

*Type of request:* Extension of approval.

*General description of respondents:* Manufacturers, importers, and private labelers of bicycle helmets.

*Estimated number of respondents:* 30.

*Estimated number of models tested:* 200.

*Estimated average number of hours per respondent:* 100–150 hours per year.

*Estimated average number of hours for all respondents:* 20,000–30,000 hours per year.

*Estimated cost of collection for all respondents:* $896,000—$1,345,000 per year.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by July 6, 2007 to the (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov*.

Dated: May 31, 2007.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E7–10795 Filed 6–5–07; 8:45 am]

**BILLING CODE 6355–01–P**

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Request for Extension of Approval of Information Collection Requirements—Recordkeeping Requirements Under the Safety Regulations for Full-Size Cribs

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In the February 12, 2007 **Federal Register** (72 FR 6533), the Consumer Product Safety Commission (CPSC or Commission) published a notice in accordance with provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of information collection requirements in the safety regulations for full-size cribs. 16 CFR 1500.18(a)(13) and part 1508. Joint comments in support of the information collection were submitted by the Consumer Federation of America, Consumers Union, Kids in Danger and Keeping Babies Safe, Inc. Commentors state that the ability of the Commission to better communicate news of recalls to retailers and individuals is critical to removing potentially dangerous cribs and the continued collection of information may assist in that effort. The Commission now announces that it is submitting to the Office of Management and Budget (OMB) a request for extension of approval of that collection of information.

These regulations were issued to reduce hazards of strangulation, suffocation, pinching, bruising, laceration, and other injuries associated with full-size cribs. The regulations prescribe performance, design, and labeling requirements for full-size cribs. They also require manufacturers and importers of those products to maintain sales records for a period of three years after the manufacture or importation of full-size cribs. If any full-size cribs subject to provisions of 16 CFR 1500.18(a)(13) and part 1508 fail to comply in a manner severe enough to warrant a recall, the required records can be used by the manufacturer or importer and by the Commission to identify those persons and firms who should be notified of the recall. OMB previously approved the collection of information under control number 3041–0013. OMB's most recent extension of approval will expire on September 30, 2007.

**Additional Information About the Request for Extension of Approval of Information Collection Requirements**

*Agency address:* Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.

*Title of information collection:* Recordkeeping Requirements for Full-Size Baby Cribs, 16 CFR 1508.10.

*Type of request:* Extension of approval.

*Frequency of collection:* Varies, depending upon volume of products manufactured, imported, or sold.

*General description of respondents:* Manufacturers and importers of full-size cribs.

*Estimated number of respondents:* 75.

*Estimated average number of responses per respondent:* 1 per year.

*Estimated number of responses for all respondents:* 75 per year.

*Estimated number of hours per response:* 5.

*Estimated number of hours for all respondents:* 375 per year.

*Estimated cost of collection for all respondents:* $17,000.

*Comments:* Comments on this request for extension of approval of information collection requirements should be submitted by July 6, 2007 to the (1) Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340, and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov*, or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

Copies of this request for approval of information collection requirements and supporting documentation are available from Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

Dated: May 31, 2007.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E7–10796 Filed 6–5–07; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Security Education Board Members Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

**DATES:** June 26, 2007.

**ADDRESSES:** Holiday Inn Rosslyn at Key Bridge, Shenandoah Room AB, 1800 North Fort Meyer Drive, Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Dr. Kevin Gormley, Program Officer, National Security Education Program, 1101 Wilson Boulevard, Suite 1210,

Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *Gormleyk@nau.edu.*

**SUPPLEMENTARY INFORMATION:** The National Security Education Board Members meeting is open to public. The public is afforded the opportunity to submit written statements associated with NSEP.

Dated: May 30, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 07–2803 Filed 6–5–07; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Reserve Forces Policy Board

**AGENCY:** Department of Defense.

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. section 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting.

*Name of Committee:* Reserve Forces Policy Board (RFPB).

*Date:* June 20–21, 2007.

*Time:* (20th) 8 a.m.–4:30 p.m.; (21st) 8 a.m.–3 p.m.

*Location:* Meeting address is Pentagon Room 3E733, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

*Purpose of the Meeting:* An open meeting of the Reserve Forces Policy Board.

*Agenda:* Discussion of long-range issues relevant to the Reserve Components.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. To request a seat, please contact 703–697–4486, or by e-mail, *marjorie.davis@osd.mil* and/or *donald.ahern@osd.mil.*

*Written Statements:* Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The designated Federal Officer's contact information can be obtained from the GSA's FACA Database *https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

**FOR FURTHER INFORMATION CONTACT:** Col. Marjorie Davis, Designated Federal Officer, (703) 697–4486 (Voice), (703) 614–0504 (Facsimile), *marjorie.davis@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

Dated: May 31, 207.

**L.M. Bynum,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 07–2804 Filed 6–5–07; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Mandatory Provision of Warehouse Performance Bond by Department of Defense Personal Property Storage Transportation Service Providers (TSPs)/Contractors

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice.

**SUMMARY:** The Military Surface Deployment and Distribution Command (SDDC), as the Program Manager for Department of Defense (DOD) Personal Property Storage Program, is informing the Non-Temporary Storage (NTS) Transportation Service Provider (TSP)/contractor community of the mandatory requirement to provide a Warehouse Performance Bond (WPD) coverage for all contracts/agreements in the DOD Personal Property Non-Temporary Storage Program. The cost of WPB shall be included in agreements/contracts with movers and WPB shall be used to offset costs to the DOD associated with a termination of these contracts with movers.

All shipments that have been awarded up or are already in storage prior to the effective dates noted below will not be required to be covered by WPB. This notice affords TSPs/contractors ample time to incorporate the cost of providing the WPB into their rates.

**DATES:** *Effective Date:* October 1, 2007.

**ADDRESSES:** Requests for additional information may be sent by e-mail to: *Centralrsmo@sddc.army.mil;* or by courier to: Department of Army, HQ SDDC Central RSMO, ATTN: SDDC–PPP–PA–C, P.O. Box 19225, Topeka, KS 66619–0225. Such comments must be received not later than 30 calendar days from the date this notice is published in the **Federal Register.**

**SUPPLEMENTARY INFORMATION:**

1. The NTS TSP will, at its' own expense, procure a Warehouse Performance bond and furnish the SDDC, Regional Storage Management Office, Regional Program Manager a ''Continuous Until Cancelled'' Bond from the Surety Company representative. The Bond will be used to cover the estimated cost of re-procurement, should the TSP fail to provide an acceptable storage facility. This bond must be provided prior to entering into a binding Tender of Service agreement. The NTS TSP shall provide a Bond meeting the requirements listed below:

a. Bond shall be in the amount of $25,000 or 25 cents per pound in storage, whichever is greater. The Regional Program Manager shall review the Warehouse Performance Bond annually. If the responsible Regional Storage Management Office determines the Warehouse Performance Bond needs to be increased, the NTS TSP will be notified and provided 30 days to submit a new Bond reflecting the updated amount.

b. Provide a 30 day advance written notice to the Regional Program Manager in the event of cancellation or material change. Upon cancellation of the present bond, the NTS TSP must provide evidence of continuing coverage at least 10 days prior to cancellation. If a lapse occurs the NTS TSP approval will be rescinded.

c. The Surety Company must maintain a rating of ''A'' or better in the current issue of Best's Insurance Guide in order to be approved by the RPM.

d. Use of the Bond form listed in Part III, Item 10 of this agreement and shown as attachment 10 to this agreement is required.

2. The Regional Program Manager has sole responsibility for the approval and acceptance of a storage facility for use in the NTS program. When the Regional Program Manager has determined a storage facility does not meet the criteria

for continued acceptance in the NTS program, the Warehouse Performance Bond shall be used to offset costs associated in relocating the lots stored in the unacceptable facility to an approved facility of the Regional Program Manager's choosing.

*Background:* Due to the monetary loss associated with re-procuring services for shipments in storage, it has been determined that a Warehouse Performance Bond is in the best interest of DOD. This Bond will be used to cover the costs associated in relocating stored shipments to an approved warehouse site as determined by the SDDC, Regional Storage Management Office, Regional Program Manager. Relocation of stored shipments becomes necessary when the warehouse currently in use is no longer approved for use in the DOD Personal Property Storage Program or the TSP/contractor is no longer acceptable as a service provider.

**Regulation Flexibility Act**

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

**Paperwork Reduction Act**

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or recordkeeping requirements are imposed on contractors, offerors of members of the public.

**Steven L. Amato,**

*Col, USAF, DCS, Passenger and Personal Property.*

[FR Doc. 07–2807 Filed 6–5–07; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Ocean Research and Resources Advisory Panel

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Ocean Research and Resources Advisory Panel (ORRAP) will meet to discuss National Ocean Research Leadership Council (NORLC) and Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI) activities. All sessions of the meeting will remain open to the public.

**DATES:** The meeting will be held on Wednesday, June 27, 2007, from 8 a.m. to 5:30 p.m. and Thursday, June 28, 2007, from 8 a.m. to 1:30 p.m. In order to maintain the meeting time schedule, members of the public will be limited in their time to speak to the Panel. Members of the public should submit their comments one week in advance of the meeting to the meeting Point of Contact.

**ADDRESSES:** The meeting will be held at the Consortium for Ocean Research and Engineering, 1201 New York Ave., Suite 420, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. James E. Eckman, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, *telephone:* 703–696–4590.

**SUPPLEMENTARY INFORMATION:** This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The meeting will include discussions on ocean research to applications, ocean observing, professional certification programs, and other current issues in the ocean science and resource management communities.

Dated: June 1, 2007.

**L.R. Almand,**

*Office of the Judge Advocate General, Administrative Law, Federal Register Liaison Officer.*

[FR Doc. E7–10862 Filed 6–5–07; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF EDUCATION

### A Framework for Developing High-Quality English Language Proficiency Standards and Assessments

**AGENCY:** Office of the Deputy Secretary, Department of Education.

**ACTION:** Notice of public meetings and request for recommendations on a framework for developing high-quality English language proficiency standards and assessments (Framework).

**SUMMARY:** The Secretary of Education (Secretary) seeks recommendations on developing a Framework for States to consider in examining the quality of their standards and assessments for English language proficiency (ELP) under Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). The Framework, once developed, will be provided to States for their use in evaluating their ELP standards and assessments. The Framework also will help States identify their technical assistance needs related to ELP standards and assessments and, therefore, help the U.S. Department of Education (Department) provide States with the assistance they need to implement the Title III standards and assessment requirements effectively.

**DATES:** We must receive your recommendations on or before 5 p.m., Eastern time, on August 1, 2007.

**ADDRESSES:** Address all recommendations to the Office of the Deputy Secretary, U.S. Department of Education, 400 Maryland Avenue, SW., room 7W308, Washington, DC 20202–6132.

If you prefer to send your recommendations through the Internet, use the following e-mail address: *LEP.Partnership@ed.gov.*

You must use the term ''Framework for Title III'' in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Hanna Skandera. *Telephone:* (202) 401–0831.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:**

**Background**

Addressing the needs of the Nation's more than 4.6 million (and growing) population of limited English proficient (LEP) students is central to meeting the goals of NCLB. Improving instruction and closing the achievement gap for LEP students start with high-quality standards and assessments. We must be able to measure what LEP students know and do not know, in terms of core subject matter and the acquisition of English language skills, in order to address their academic needs. The focus on both core subject matter (e.g., reading/language arts, math, and science) and the acquisition of English language skills requires coordination and collaboration between the Title I and Title III programs. Therefore, we invite and encourage recommendations from not only technical experts in standards, assessment, and language development, but also parents, teachers, administrators, researchers, and others with experience and expertise in Title I or Title III programs.

Section 3113 of the ESEA requires each State educational agency (SEA) to submit a plan to the Secretary describing how the agency will establish standards and objectives for raising the level of English proficiency that are derived from the four recognized

domains of speaking, listening, reading, and writing, and that are aligned with the achievement of the challenging academic content and student academic achievement standards for all students that States have adopted pursuant to section 1111(b)(1) of Title I of the ESEA. Further, under section 1111(b)(7) of Title I, each State plan must demonstrate that local educational agencies (LEAs) in the State provide an annual assessment of the English proficiency (measuring students' oral language, reading, and writing skills in English) of all LEP students in their schools. Finally, section 3122(a)(3)(A)(ii) of Title III requires that increases in the number or percentage of children attaining English proficiency be determined using a valid and reliable assessment of English proficiency.

The Department expects the Framework to be informed by States' experiences in developing standards and assessments in the academic content areas, as well as their work related to English language acquisition. In addition, the Department recognizes that there are professional standards for the technical quality of assessments, as well as accepted methodologies for developing standards and evaluating the alignment of standards with assessments. Such experiences and knowledge can, and should, inform the development of ELP standards and assessments under Title III. However, in developing their ELP standards and assessments, States have raised additional questions, such as on the level of English proficiency that is necessary to learn academic content; the differences between the skills necessary for speaking English and the skills necessary for reading and writing English; and the relationship of ELP standards and assessments to the standards and assessments developed under Title I. To address these issues and to support the States in their work to improve English language proficiency and the academic achievement of LEP students, the Department initiated the LEP Partnership. The LEP Partnership includes States, the National Council of La Raza, the Mexican American Legal Defense and Educational Fund, the Council of Chief State School Officers, the Comprehensive Center on Assessment and Accountability, and the National Clearinghouse on English Language Acquisition. For more information about the LEP Partnership, please see *http://www.ed.gov/about/inits/ed/lep-partnership.*

Through the LEP Partnership, the Department has pledged to provide technical assistance and support to States on various strategies for appropriately assessing LEP students. At the second meeting of the LEP Partnership in Washington, DC in October 2006, Department officials asked States to identify areas in which they needed technical assistance. States agreed that they needed assistance from the Department on how they should evaluate their ELP standards and the technical quality of their ELP assessments, as well as how they should demonstrate the alignment of their ELP standards with their ELP assessments. Many States also asked about the statutory language in Title III that requires States to demonstrate that their ELP standards and assessments are aligned with achievement of their State's challenging academic content and achievement standards under Title I, and how they should demonstrate this alignment. Some States specifically asked whether a single assessment could be used to assess a student's English language proficiency and achievement of content in reading/language arts.

**Invitation To Submit Recommendations**

We invite you to submit recommendations on a Framework for States to use in examining their ELP standards and assessments under Title III to ensure that they are of high quality and promote effective instruction to raise the level of English proficiency and academic achievement of LEP students. Specifically, we invite you to submit recommendations in response to the following four questions that are based on the statutory language in Title III. The Department anticipates that, within each of these questions, there will be numerous specific and technical issues you will want to address.

1. What are the critical elements that States should examine to ensure that their ELP standards promote effective instruction to raise LEP students' level of English proficiency? (Section 3113(b)(2))

2. What are the critical elements that States should examine to ensure that their ELP assessments provide a valid and reliable assessment of English language proficiency? (Section 3122(a)(3)(A)(ii))

3. What are the critical elements that States should examine to ensure that their ELP standards are aligned with their ELP assessments? (Sections 3113(b)(2) and (3)(D) and 3122(a)(3)(A)(ii)).

4. What are strategies that States can use to ensure that their ELP standards are aligned with the achievement of challenging State academic content standards and student academic achievement standards they have adopted under Title I? (Section 3113(b)(2)).

To ensure that your recommendations are considered in the development of the Framework, we urge you to identify clearly the specific question that each recommendation addresses and to arrange your recommendations in the order listed above.

We encourage you to make your recommendations as specific as possible. Please also include, with your recommendations, a description of your involvement in LEP issues.

During and after the period for submitting recommendations, you may inspect all recommendations about the Framework at the U.S. Department of Education, 400 Maryland Avenue, SW., room 7W308, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Recommendations**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the recommendations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

**Announcement of Public Meetings**

We also will be holding a series of meetings to seek recommendations for developing the Framework. The meetings will occur on the following dates at the times and locations indicated:

Wednesday, June 20, 2007, in Nashville, Tennessee at the Gaylord Opryland Resort and Convention Center, 2800 Opryland Drive, Nashville, TN, from 1 p.m. to 5 p.m.

Wednesday, July 18, 2007, in Washington, DC at the Wyndham Hotel, 1400 M Street, NW., from 2 p.m. to 6 p.m.

Thursday, July 26, 2007, in Washington, DC at the Capitol Hilton, 1001 16th Street, NW., from 1 p.m. to 5 p.m.

Each meeting will begin with a roundtable discussion, with experts who have been invited by the Department to participate in a discussion, focused on the four questions listed above. These experts will be from State Departments of Education, LEAs, universities, and non-governmental organizations and have knowledge and expertise in the following areas: Assessment development (both content assessments

under Title I and language acquisition assessments under Title III); standards development; assessment and instruction of LEP students; Title III requirements; Title I requirements; and English language development. Staff from the Department's comprehensive technical assistance centers will facilitate the roundtable discussions.

During the final 90 minutes of each meeting, we will provide the public with an opportunity to comment on the discussion or to provide additional recommendations.

Individuals interested in giving testimony during the public session of the meetings to address one or more of the four questions will be allowed three to five minutes to make their statements. We request that you submit three written copies and an electronic file (CD or diskette) of your statement at the meeting. Please include your name and contact information on the written and electronic files.

If you are interested in giving testimony during the public session of a meeting, please register at the LEP Partnership Web site, *LEP.Partnership@ed.gov,* at least one week before the public meeting. We will process registrations on a first-come, first-served basis. Persons who are unable to register to present testimony during the meeting are encouraged to submit written recommendations. Written recommendations will be accepted at the meeting site or via e-mail at the addresses listed in the **ADDRESSES** section of this notice.

**Assistance to Individuals With Disabilities at the Public Meetings**

The meeting sites will be accessible to individuals with disabilities and sign language interpreters will be available. If you need an auxiliary aid or service other than a sign language interpreter to participate in the meeting (e.g., interpreting service such as oral, cued speech, or tactile interpreter; assisted listening device; or materials in alternate format), notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

**Electronic Access to This Document**

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: June 1, 2007.

**Raymond Simon,**

*Deputy Secretary.*

[FR Doc. E7–10919 Filed 6–5–07; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Office of Fossil Energy; Ultra-Deepwater Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

This notice announces a meeting of the Ultra-Deepwater Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 21, 2007, 8:30 a.m.—Registration. 9 a.m. to 5 p.m.

**ADDRESSES:** Crystal City Marriott at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Elena Melchert or Bill Hochheiser, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. *Phone:* 202–586–5600.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the Ultra-Deepwater Advisory Committee is to provide advice on development and implementation of programs related to ultra-deepwater natural gas and other petroleum resources to the Secretary of Energy; provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

*Tentative Agenda:*

8:30 a.m.–9 a.m. Registration.

9 a.m.–12 p.m. Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Overview of Draft Annual Plan, presentation on the DOE Traditional Oil and Gas Program, Section 999 Planning Process and draft annual plan including the National Energy Technology Laboratory Complimentary Plan, overview of the RPSEA Ultra-Deep Water proposed plan, and overview of Section 999D Advisory Committees

12 p.m.–1 p.m. Lunch.

1 p.m.–4:30 p.m. Facilitated Discussions.

4:30 p.m.–5 p.m. Public Comments.

5 p.m. Adjourn.

*Public Participation:* The meeting is open to the public. The Designated Federal Officer, Chairman of the Committee, and a Facilitator will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert or Bill Hochheiser at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on June 1, 2007.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E7–10912 Filed 6–5–07; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Office of Fossil Energy; Unconventional Resources Technology Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

This notice announces a meeting of the Unconventional Resources Technology Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that notice of these meetings be announced in the **Federal Register**.

**DATES:** Friday, June 22, 2007, 8:30 a.m.—Registration. 9 a.m. to 5 p.m.

**ADDRESSES:** Sheraton Crystal City Hotel Arlington, 1800 Jefferson Davis Highway, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Elena Melchert or Bill Hochheiser, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* The purpose of the Unconventional Resources Technology Advisory Committee is to provide advice on development and implementation of programs related to onshore unconventional natural gas and other petroleum resources to the Secretary of Energy; and provide comments and recommendations and priorities for the Department of Energy Annual Plan per requirements of the Energy Policy Act of 2005, Subtitle J, Section 999.

*Tentative Agenda:*

8:30 a.m.–9 a.m. Registration.

9 a.m.–12 p.m. Welcome & Introductions, Opening Remarks by the Designated Federal Officer, Overview of Draft Annual Plan, presentation on the DOE Traditional Oil and Gas Program, Section 999 Planning Process and draft annual plan including the National Energy Technology Laboratory Complimentary Plan, overview of the RPSEA Unconventional Resources Technology proposed plan, and overview of Section 999D Advisory Committees.

12 p.m.–1 p.m. Lunch.

1 p.m.–4:30 p.m. Facilitated Discussions.

4:30 p.m.–5 p.m. Public Comments.

5 p.m. Adjourn.

*Public Participation:* The meeting is open to the public. The Designated Federal Officer, Chairman of the Committee, and a Facilitator will lead the meeting for the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Elena Melchert or Bill Hochheiser at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

*Minutes:* The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on June 1, 2007.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. E7–10910 Filed 6–5–07; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC07–515–000; FERC–515]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due August 9, 2007.

**ADDRESSES:** Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07–515–000. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–515 ''Hydropower Licensing: Declaration of Intention'' (OMB No. 1902–0079) is used by the Commission to implement the statutory provisions of Part I, Sections 23(b) of the Federal Power Act 16 U.S.C. 817. Section 23(b) authorized the Commission to make a determination as to whether it has jurisdiction over a proposed hydroelectric project. Section 23(b) also requires that any person intending to construct project works on a navigable commerce clause water must file a declaration of their intention with the Commission. If the Commission finds the proposed project will have an impact on ''interstate or foreign commerce'', then the person intending to construct the project must obtain a Commission license or exemption before starting construction. Such sites are generally on streams defined as U.S. navigation waters, and over which the Commission has jurisdiction under its authority to regulate foreign and interstate commerce. The information is collected in the form of a written application, declaring the applicant's intent and used by Commission staff to research the jurisdictional aspects of the project. This research includes examining maps and land ownership records to establish whether or not there is Federal jurisdiction over the lands and waters affected by the project. A finding of non-jurisdictional by the Commission eliminates a substantial paperwork burden for the applicant who might otherwise have to file for a license or exemption application. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 24.

*Action:* The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 10 | 1 | 80 hours | 800 hours. |

The estimated total cost to respondents is $46,976 (800 hours divided by 2,080 hours per employee per year times $122,137 per year average salary per employee. The cost per respondent = $4,698.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10811 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC07–511–000; FERC–511]**

### Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 30, 2007.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Comments on the collection of information are due August 9, 2007.

**ADDRESSES:** Copies of sample filings of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or from the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–34, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filing, the original and 14 copies of such comments should be submitted to the Secretary of the Commission, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and refer to Docket No. IC07–511–000. Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-Filing'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERConlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements of FERC–511 ''Application for Transfer of License'' (OMB No. 1902–0069) is used by the Commission to implement the statutory provisions of section 4(e) and 8 of the Federal Power Act (FPA) (16 U.S.C. 792–828c.). Section 4(e) authorizes the Commission to issue licenses for the construction, operation and maintenance of reservoirs, powerhouses and transmissions lines or other facilities necessary for development and improvement of navigation and for the development, transmission, and utilization of power from bodies of water Congress has jurisdiction over. Section 8 of the FPA provides that the voluntary transfer of any license can only be made with the written approval of the Commission. Any successor to the licensee may assign the rights of the original licensee but is subject to all of the conditions of the license. The information filed with the Commission is a mandatory requirement contained in the format of a written application for transfer of license, executed jointly by the parties of the proposed transfer. The transfer of a license may be occasioned by the sale or merger of a licensed hydroelectric project. It is used by the Commission's staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 9.

*Action:* The Commission is requesting a three-year extension of the current

expiration date, with no changes to the existing collection of data.

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents annually (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)×(2)×(3) |
|---|---|---|---|
| 23 | 1 | 40 | 920 hours |

Estimated cost burden to respondents is $54,022. (920 hours/2080 hours per year times $122,137 per year average per employee = $ 54,022.). The cost per respondent is $2,348.00.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10812 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER07–460–000]**

## Dillon Wind, LLC; Notice of Issuance of Order

May 30, 2007.

Dillon Wind, LLC (Dillon) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. Dillon also requested waivers of various Commission regulations. In particular, Dillon requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Dillon.

On May 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Dillon should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 29, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Dillon is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Dillon, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Dillon's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10816 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP04–119–006]**

## Dominion Transmission, Inc.; Notice of Annual Report

May 30, 2007.

Take notice that on May 4, 2007, Dominion Transmission, Inc. (DTI) tendered for filing its annual report of operational sales of gas pursuant to Section 42.D of the General Terms and Conditions of its FERC Gas Tariff and

Section 154.502 of its regulations of the Commission.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 5, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10805 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. PR07–13–000]**

### Enterprise Alabama Intrastate, LLC; Notice of Petition for Rate Approval

May 31, 2007.

Take notice that on May 21, 2007, Enterprise Alabama Intrastate, LLC (EAI) filed a petition for rate approval for NGPA section 311 maximum transportation rates equal to 62.01 cents per MMBtu, pursuant to section 284.123(b)(2) of the Commission's regulations, with a proposed effective date of June 1, 2007.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time June 14, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10839 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER07–808–000]**

### EPIC Merchant Energy CA, LLC; Notice of Issuance of Order

May 30, 2007.

EPIC Merchant Energy LLC (EPIC) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. EPIC also requested waivers of various Commission regulations. In particular, EPIC requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by EPIC.

On May 30, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by EPIC should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is June 29, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, EPCI is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of EPIC, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of EPIC's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the

''e-Filing'' link. The Commission strongly encourages electronic filings.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10815 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–464–000]**

### High Island Offshore System L.L.C.; Notice of Tariff Filing

May 31, 2007.

Take notice that on May 25, 2007, High Island Offshore System L.L.C. (HIOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 1 and Second Revised Sheet No. 12, effective January 1, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10843 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP07–357–002; CP05–92–005]**

### Liberty Gas Storage, LLC; Notice of Compliance Filing

May 31, 2007.

Take notice that on May 24, 2007, Liberty Gas Storage LLC (Liberty) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 155 and Original Sheet No. 155A, effective May 7, 2007.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10838 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER05–6–096; EL04–135–099; EL02–111–116; EL03–212–112]**

### Midwest Independent Transmission System Operator, Inc.; Midwest Independent Transmission System Operator, Inc., PJM Interconnection, LLC; Midwest Independent Transmission System Operator, Inc., PJM Interconnection, LLC; Ameren Services Company; Notice of Filing

May 31, 2007.

Take notice that on May 15, 2007, the PJM Transmission Owners, acting through the Consolidated Transmission Owners Agreement, PJM Rate Schedule No. 42, jointly filed revised Attachments R and X of the PJM Open Access Transmission Tariff, pursuant to section 205 of the Federal Power Act.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 6, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10845 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM06–16–003]**

### North American Electric, Reliability Corporation; Notice of Compliance Filing

May 31, 2007.

Take notice that on May 15, 2007, the North American Electric Reliability Corporation submitted filing in compliance with Order No. 693 issued May 16, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 14, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10832 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM05–30–000]**

### Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards; Notice of Availability of Filing

May 31, 2007.

Take notice that, on May 29, 2007, the North American Electric Reliability Corporation (NERC) filed with the Commission its 2007 Summer Reliability Assessment report for the time period of June 2007 through September 2007.

Section 39.11 of the Commission's regulations provides that the Electric Reliability Organization (ERO) shall conduct assessments of, among other things, the adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, each Regional Entity, and each Regional Advisory Body annually or more frequently if so ordered by the Commission.

This assessment is filed under Docket No. RM05–30–000 and is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room. For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10841 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL05–121–004]**

### PJM Interconnection, L.L.C.; Notice of Filing

May 31, 2007.

Take notice that on May 21, 2007, PJM Interconnection, L.L.C. (PJM) filed a compliance filing amending Schedule 12 of FERC Electric Tariff, Sixth Revised Volume No. 1, pursuant to Opinion No. 494. *PJM Interconnection, L.L.C.* Opinion No. 494, 119 FERC ¶ 61,063 (2007). Also on May 29, 2007, PJM filed a supplement to this filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 11, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10835 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–465–000]**

### Questar Southern Trails Pipeline Company; Notice of Annual Fuel Reimbursement Report

May 31, 2007.

Take notice that on May 25, 2007, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing its annual fuel reimbursement report pursuant to Section 30 to the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1.

Southern Trails states that copies of the filing have been served upon its customers and the Public Service Commission's of Utah, New Mexico, Arizona and California.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time June 7, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10844 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP07–383–000]**

### Rockies Express Pipeline LLC; Notice of Request Under Blanket Authorization

May 31, 2007.

Take notice that on May 17, 2007, Rockies Express Pipeline LLC (Rockies Express), Post Office Box 281304, Lakewood, Colorado 80228–8304, filed in Docket No. CP07–383–000, an application pursuant to Sections 157.205 and 157.208 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct and operate certain gas supply facilities in Sweetwater County, Wyoming, under Rockies Express' blanket certificate issued in Docket Nos. CP04–413–000, CP04–414–000, and CP04–415–000, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Rockies Express proposes to construct and operate gas supply facilities consisting of: (1) Approximately 2.60 miles of 16-inch diameter lateral pipeline extending from an interconnection with the existing gathering facilities of Lost Creek Gathering Company, L.L.C., to Rockies Express' mainline; (2) measurement facilities; and (3) compression. The proposed facilities would transport, compress, and deliver into Rockies Express' mainline up to 150,000 Dekatherm (Dth) equivalent of processed natural gas. Rockies Express estimates that it would cost $15, 156,027 to construct the proposed Sweetwater County facilities. Rockies Express would finance the proposed construction with internally generated funds.

Any questions concerning this application may be directed to Skip George, Manager of Regulatory, Rockies Express Pipeline LLC, P.O. Box 281304, Lakewood, Colorado 80228–8304, or telephone 303–914–4969.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10836 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. EL05–102–003]**

### Southern Company Services, Inc.; Notice of Filing

May 31, 2007.

Take notice that on May 18, 2007, Southern Company Services, Inc. acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company filed a revised compliance filing, pursuant to ordering paragraph (A) of the Commission's April 19, 2007 Order. *Southern Company Services, Inc.,* 119 FERC ¶ 61,065 (2007).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 15, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10842 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No.CP07–389–000]**

## Southern Natural Gas Company; Notice of Application

May 30, 2007.

Take notice that on May 22, 2007, Southern Natural Gas Company (Southern), 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP07–389–000, an application pursuant to section 7 (b) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for authorization to abandon by sale to STL Pipeline, LLC (STL), certain transmission pipelines and related appurtenant facilities located in federal waters offshore Texas. Southern also requests a determination that the facilities to be abandoned will be considered non-jurisdictional facilities under Section 1(b) of the NGA upon the closing of the sale, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Southern seeks Commission authorization of its proposed abandonment by sale to STL of 5.98 miles of 10.75-inch transmission pipelines and appurtenant facilities in the Matagorda Island area in federal waters offshore Texas (Matagorda Island Facilities). Also included in the sale to STL is 2.02 miles of 6.625-inch pipeline (Matagorda 657 Line) that will be abandoned by sale pursuant to Southern's blanket certificate issued in Docket No. CP82–406–000.

Southern states that the proposed abandonment by sale to STL will not affect the capacity of Southern's pipeline system or impact the availability of gas supplies on its system. These facilities do not currently provide firm transportation services, only interruptible. Southern states that the customers obtaining interruptible transportation (IT) from these facilities during the past 12 months have consented to the proposed abandonment by sale.

Southern also requested in its application, a determination from the Commission that both the Matagorda Island Facilities and the Matagorda 657 Line will be non-jurisdictional gathering facilities under 1(b) of the NGA upon closing of the sale to STL. Southern states that the Matagorda Island Facilities and the Matagorda 657 Line meet the standards set forth by the ''Primary Function Test'' established in *Farmland Industries Inc.,* 23 FERC ¶ 61,063 (1983) and the ''Modified Primary Function'' Test established in *Amerada Hess Corporation,* 52 FERC ¶ 61,268 (1990).

Any questions regarding this application should be directed to John C. Griffin, Senior Counsel, Post Office Box 2563, Birmingham, Alabama 35202–2563, at (205) 325–7133.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the

Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov.* The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

*Comment Date:* June 20, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10814 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP07–396–001]**

### Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 31, 2007.

Take notice that on May 23, 2007, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, effective May 9, 2007:

Substitute Ninth Revised Sheet No. 324
Substitute Fifth Revised Sheet No. 324A

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 4, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10840 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES07–31–000]**

### Trans Bay Cable LLD; Notice of Filing

May 29, 2007.

Take notice that on May 25, 2007, Trans Bay Cable LLC tendered for filing amendments to the Application Under Section 204 of the Federal Power Act for Authority to Issue Securities.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 4, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10817 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL07–65–000]**

### Bonneville Power Administration Complainant, v. Puget Sound Energy, Inc., Hermiston Power Partnership, Chehalis Power Generating, L.P., PPM Energy, Inc. TransAlta Centralia Generation, L.L.C., Respondents.; Notice of Complaint

May 31, 2007.

Take notice that on May 30, 2007, the Bonneville Power Administration (Bonneville) filed a formal complaint against Puget Sound Energy, Inc., Hermiston Power Partnership, Chehalis Power Generating, L.P., PPM Energy, Inc., and TransAlta Centralia Generation, L.L.C. (Respondents) pursuant to section 206 of the Federal Power Act and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 CFR 385.206 (2006), requesting that the Commission issue an order reducing to zero the rates Respondents may charge Bonneville for Reactive Power Service, effective October 1, 2007.

Bonneville certified that copies of the complaint were served on the contacts for Respondents as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.*

Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on June 19, 2007.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10834 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Combined Notice of Filings # 1

May 30, 2007.

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC06–15–001; EC06–78–001; EC07–37–001; EC06–147–001.

*Applicants:* Entegra Power Group LLC; Gila River Power, L.P.; Union Power Partners, L.P.; Morgan Stanley & Co. Incorporated; Merrill Lynch; Pierce, Fenner & Smith Inc.; Entegra Holdings LLC; Entegra TC LLC.

*Description:* Application by Entegra Power Group, LLC et al for order amending blanket authorizations for certain future transfers & acquisitions of equity interests under Section 203.

*Filed Date:* 5/15/2007.

*Accession Number:* 20070524–0006.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 5, 2007.

*Docket Numbers:* EC07–94–000.

*Applicants:* Forked River Power LLC.

*Description:* Forked River Power LLC submits an application for its proposed acquisition of the Forked River Generating Station with related assets and real property from Jersey Central Power & Light Co.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0116.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* EC07–95–000.

*Applicants:* UBS Americas Inc.; UBS International Infrastructure Fund; UBS AG; Northern Star Generation LLC; AIG Global Investment Corp.; Front Range Power Company, LLC; Vandolah Power Company, LLC.

*Description:* UBS Americas Inc et al submit a Joint Application for authorization for disposition of jurisdictional assets pursuant to section 203 of the FPA.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0087.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* EC07–96–000.

*Applicants:* Eagle Energy Partners I, LP; Lehman Brothers Commodity Services Inc.

*Description:* Eagle Energy Partners I, LP et al submit an application under Section 203 for authorization of disposition of jurisdictional facilities resulting from Lehman's proposed acquisition of all ownership interest in Eagle.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0181.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* EC07–97–000.

*Applicants:* Ecofin Holdings Limited; Ecofin Limited; Ecofin, Inc.; Ecofin Fund Management Limited; Ecofin General Partner Limited; Ecofin Water & Power Opportunities Plc; Ecofin Global Utilities Hedge Fund Limit; Ecofin Global Utilities Hedge Fund LP; Ecofin Global Utilities Master Fund Limited; Ecofin Special Situations Utilities Fund; Ecofin Special Situations Utilities Fund; Ecofin Special Situations Utilities Master; HFR HE Ecofin Master Trust.

*Description:* Ecofin Holdings Limited et al submit its request for blanket authorization to acquire securities under Section 203 of the FPA.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070529–0241.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG07–56–000.

*Applicants:* Tiverton Power LLC and Rumford Power LLC.

*Description:* Tiverton Power LLC and Rumford Power LLC notice of Self-Certification of Exempt Wholesale Generator Status as the Proposed Owners of the Tiverton and Rumford Generating Facilities.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070524–5068.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER99–1761–002.

*Applicants:* AES Eastern Energy, LP.

*Description:* AES Eastern Energy, LP submits a notice of Non-Material Change in Status Regarding Market-Based Rate Authority.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070524–5010.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER01–1266–008; ER01–1270–010; ER01–1267–010; ER01–1278–010; ER01–1268–009; ER01–1271–009; ER01–1272–008; ER01–1269–008; ER01–1273–009; ER01–1277–008; ER02–1213–007; ER06–406–001.

*Applicants:* Mirant California, LLC; Mirant Delta, LLC; Mirant Canal, LLC; Mirant Kendall, LLC; Mirant Potrero, LLC; Mirant Bowline, LLC; Mirant Lovett, LLC; Mirant Chalk Point, LLC; Mirant Mid-Atlantic, LLC; Mirant Potomac River, LLC; Mirant Energy Trading, LLC; Mirant Power Purchase, LLC.

*Description:* Mirant Entities submits Notice of a Non-Material Change in Status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority.

*Filed Date:* 5/22/2007.

*Accession Number:* 20070524–0120.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 12, 2007.

*Docket Numbers:* ER05–1178–010; ER05–1191–010.

*Applicants:* Gila River Power, L.P.; Union Power Partners, L.P.

*Description:* Gila River Power, L.P. et al submits notice of non-material change in status relating to their upstream ownership structure.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070529–0244.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER06–456–011; ER06–954–007; ER06–1271–006; ER07–424–002.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, LLC submits amendments to Schedule 12—Appendix to reflect the allocation of cost responsibility on a region-wide basis etc, in compliance with FERC's 4/19/07 Order.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0038.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* ER07–335–001; ER07–335–000.

*Applicants:* E.ON U.S., LLC.

*Description:* E.ON U.S., LLC submits a motion to withdraw Service Agreement Filing.

*Filed Date:* 5/16/2007.

*Accession Number:* 20070516–5085.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 6, 2007.

*Docket Numbers:* ER07–569–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits its Compliance Filing re Load Scheduling Amendment to the ISO Tariff in accordance with FERC's April 24, 2007 Order.

*Filed Date:* 5/23/2007.

*Accession Number:* 20070525–0074.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 13, 2007.

*Docket Numbers:* ER07–577–002.

*Applicants:* The Midwest Independent Transmission System Operator, Inc.

*Description:* Midwest Independent Transmission System Operator, Inc submits supplemental information pursuant to FERC's 4/20/07 Deficiency Letter.

*Filed Date:* 5/22/2007.

*Accession Number:* 20070524–0119.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 12, 2007.

*Docket Numbers:* ER07–577–003.

*Applicants:* Midwest Independent Transmission System.

*Description:* Endeavor Power Partners, LLC submits responses to FERC's Data Requests, 4/20/06 deficiency letter.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0118.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* ER07–613–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits its Compliance Filing in accordance with FERC's May 8 Order.

*Filed Date:* 5/23/2007.

*Accession Number:* 20070525–0076.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 13, 2007.

*Docket Numbers:* ER07–876–001.

*Applicants:* Chevron Coalinga Energy Company; Texaco Natural Gas Inc.

*Description:* Chevron Coalinga Energy Co submits an amendment to the 5/9/07 filing of a notice succession and tariff filing to renumber and re-date the redline and clean tariff sheets.

*Filed Date:* 5/23/2007.

*Accession Number:* 20070525–0077.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 13, 2007.

*Docket Numbers:* ER07–877–001.

*Applicants:* WSPP Inc.

*Description:* Grays Harbor Energy LLC requests that FERC accept an amendment to WSPP, Inc's Agreement to include them as a participant.

*Filed Date:* 5/23/2007.

*Accession Number:* 20070525–0075.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 13, 2007.

*Docket Numbers:* ER07–919–000.

*Applicants:* Mint Farm Energy Center LLC.

*Description:* Mint Farm Energy Center LLC submits an application for Market-Based Rate Authority and Associated Waivers and Blanket Approvals.

*Filed Date:* 5/21/2007.

*Accession Number:* 20070524–0059.

*Comment Date:* 5 p.m. Eastern Time on Monday, June 11, 2007.

*Docket Numbers:* ER07–920–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services, Inc agent for Entergy Operating Companies submits an executed Second Revised Network Integration Transmission Service Agreement etc with the City of Ruston, Louisiana.

*Filed Date:* 5/22/2007.

*Accession Number:* 20070524–0081.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, June 12, 2007.

*Docket Numbers:* ER07–923–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* California Independent System Operator Corp submits an executed Metered Subsystem Agreement with the City of Riverside, CA and a notice of termination for Service Agreements 424 and 636.

*Filed Date:* 5/18/2007.

*Accession Number:* 20070524–0061.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 8, 2007.

*Docket Numbers:* ER07–930–000.

*Applicants:* AER NY-Gen, LLC.

*Description:* AER NY-Gen, LLC submits a revised Market-Based Rate Tariff to reflect a name change etc.

*Filed Date:* 5/23/2007.

*Accession Number:* 20070525–0067.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 13, 2007.

*Docket Numbers:* ER07–931–000.

*Applicants:* Oncor Electric Delivery Company.

*Description:* Oncor Electric Delivery Co submits First Revised Sheet 37 et al to FERC Electric Tariff, Tenth Revised Volume 1 to be effective 4/26/07.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070525–0066.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–932–000.

*Applicants:* Oncor Electric Delivery Company.

*Description:* Oncor Electric Delivery Co submits First Revised Sheet 34 to FERC Electric Tariff, Fifth Revised Volume 2 to be effective 4/26/07.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070525–0065.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–933–000.

*Applicants:* Nevada Power Company.

*Description:* Nevada Power Co submits three Notices of Cancellation of FERC Rate Schedule 91, 94 and 95.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070525–0064.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–934–000.

*Applicants:* The Detroit Edison Company.

*Description:* The Detroit Edison Co submits Second Revised Sheet 23 et al to FERC Electric Tariff, First Revised Volume 5 to be effective 6/1/07.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070525–0063.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–935–000.

*Applicants:* Entergy Services, Inc.

*Description:* Entergy Services Inc proposes to amend its Available Flowgate Capacity Process Manual to implement a new process for determining generation dispatch levels in power flow models used to calculate AFC values.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070529–0246.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–936–000; ER07–958–000.

*Applicants:* Tiverton Power LLC and Rumford Power LLC.

*Description:* Tiverton Power, LLC and Rumford Power, LLC submits their application requesting authorization to sell power at market-based rates.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070529–0245.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–937–000.

*Applicants:* PacifiCorp.

*Description:* PacifiCorp submits the Transmission Interconnection Agreement dated 5/18/07 with Flowell Electric Association.

*Filed Date:* 5/24/2007.

*Accession Number:* 20070529–0240.

*Comment Date:* 5 p.m. Eastern Time on Thursday, June 14, 2007.

*Docket Numbers:* ER07–939–000.

*Applicants:* Columbia Utilities Power, LLC.

*Description:* Columbia Utilities Power, LLC submits a Petition for

Acceptance of Initial Tariff, Waivers and Blanket Authority, FERC Electric Tariff, Original Volume 1.

*Filed Date:* 5/25/2007.

*Accession Number:* 20070530–0121.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 15, 2007.

*Docket Numbers:* ER07–940–000.

Applicants: Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, LLC.

*Description:* PJM Interconnection, LLC and Midwest Independent System Operator, Inc submits their revised Congestion Management Process of their Joint Operating Agreement and request waiver of FERC's notice requirements etc.

*Filed Date:* 5/25/2007.

*Accession Number:* 20070530–0120.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 8, 2007.

*Docket Numbers:* ER07–941–000.

*Applicants:* Pacific Gas and Electric Company.

*Description:* Pacific Gas and Electric Company submits notice of termination of the revised Service Agreement for Wholesale Distribution Service and Letter Agreement with Modesto Irrigation District.

*Filed Date:* 5/25/2007.

*Accession Number:* 20070530–0135.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 15, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10819 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

May 31, 2007.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07–502–001.

*Applicants:* PacifiCorp.

*Description:* Refund Report of PacifiCorp.

*Filed Date:* 5/30/2007.

*Accession Number:* 20070530–5036.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 20, 2007.

*Docket Numbers:* ER07–586–001.

*Applicants:* Orange and Rockland Utilities, Inc.

*Description:* Response of Orange & Rockland Utilities, Inc. to Director.

*Filed Date:* 5/18/2007.

*Accession Number:* 20070518–5027.

*Comment Date:* 5 p.m. Eastern Time on Friday, June 8, 2007.

Take notice that the Commission received the following public utility holding company filings:

*Docket Numbers:* PH07–17–000.

*Applicants:* DQE Holdings LLC.

*Description:* FERC Form 65 B—Waiver Notification of DQE Holdings LLC.

*Filed Date:* 5/30/2007.

*Accession Number:* 20070530–5059.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, June 20, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10820 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2503–110—South Carolina]**

### Duke Energy Carolinas, LLC; Notice of Availability of Environmental Assessment

May 30, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed a proposed, comprehensive shoreline management plan (SMP) for Lake Keowee, a reservoir of the Keowee-Toxaway Project (FERC No. 2503), and has prepared an environmental assessment (EA) for the proposal. The project's Lake Keowee is located on the Keowee and Little Rivers in Pickens and Oconee Counties, South Carolina.

Duke Energy Carolinas, LLC, the project licensee, filed the proposed SMP to address increased interest in residential development along the Keowee reservoir shoreline, including future requests for multi-slip marina facilities. The proposed plan, itself, does not propose the construction of facilities or any ground-disturbing activities at Lake Keowee, but only serves as a management tool for the licensee to manage the reservoir and the adjoining shoreline. The EA contains Commission staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposed SMP, as modified by staff recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Modifying and Approving Shoreline Management Plan,'' which was issued May 25, 2007, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the project number (prefaced by P- and excluding the last three digits) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10810 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12751–000; Washington]**

### Finavera Renewables Ocean Energy, Ltd.; Notice of Availability of Environmental Assessment

May 31, 2007.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for an original license for the Makah Bay Offshore Wave Energy Pilot Project to be located in part in Makah Bay of the Pacific Ocean in Clallam County, Washington and in part on the Makah Indian Reservation near Neah Bay, Washington, and has prepared an Environmental Assessment (EA) for the project. The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice and should be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 12751–000 to all comments. Comments may be electronically filed via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

For further information, contact Nicholas Jayjack at (202) 502–6073.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10833 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12710–002]**

### Passamaquoddy Tribe at Pleasant Point Reservation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 30, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12710–002.

c. *Date Filed:* May 9, 2007.

d. *Applicant:* Passamaquoddy Tribe at Pleasant Point Reservation.

e. *Name of Project:* Passamaquoddy Tribe Hydrokinetic Energy Project.

f. *Location:* The project will be located in the Western Passage off of Pleasant Point and Kendall Head, in Washington County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Steve Crawford, Environmental Director, Pleasant Point Passamaquoddy Tribe, Salkom Road, Route 190, P.O. Box 343, Perry, ME 04667, phone (207)–853–2600.

i. *FERC Contact:* Chris Yeakel, (202) 502–8132.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an

issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 55 Underwater Electric Kite (UEK) units 10 feet-tall, 18 feet-wide, and 16 feet-long consisting of, (2) two counter-rotating runners, (3) a fish/bird/mammal protection screen and deterrent system, and (4) a proposed transmission line. The Passamaquoddy Tribe's project would have an average annual generation of 29.25 gigawatt-hours and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', ''COMPETING APPLICATION'' or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10804 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2851–014]**

### Cellu Tissue Corporation; Notice of Intent to File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, Scoping Meetings, Solicitation of Comments on the Pad and Scoping Document, and Identification Issues and Associated Study Requests

May 30, 2007.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2851–014.

c. *Dated Filed:* April 13, 2007.

d. *Submitted By:* Cellu Tissue Corporation.

e. *Name of Project:* Natural Dam Hydroelectric Project.

f. *Location:* On the Oswegatchie River in town of Gouverneur, in St. Lawrence County, New York. No Federal lands are involved.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Nicholas Barr, Cellu Tissue Corp., Natural Dam Mill, 4921 Route 58N, P.O. Box 98, Gouverneur, NY 13642, (315) 287–7190.

i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with

us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Cellu Tissue Corporation as the Commission's non-federal representative for carrying out informal consultation, pursuant to Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act.

m. Cellu Tissue Corporation filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations. The Commission issued Scoping Document on May 29, 2007.

n. A copy of the PAD and the scoping document are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov* or toll free at 1–866–208–3676, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are setting the effective date for the commencement of licensing proceeding to be June 12, 2007, and soliciting comments on the PAD and the scoping document, as well as study requests. All comments on the PAD and the scoping document, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, Natural Dam Project) and number (P–2851–014), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or the scoping document, and any agency requesting cooperating status must do so by August 11, 2007.

Comments on the PAD and the scoping document, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

**Scoping Meetings**

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

*Evening Scoping Meeting*

*Date:* Tuesday, June 26, 2007.
*Time:* 6 p.m.
*Location:* Cellu Tissue Corporation, Natural Dam Mill, 4921 Route 58N, Gouverneur, NY 13642, Phone: (315) 287–7190.

*Daytime Scoping Meeting*

*Date:* Wednesday, June 27, 2007.
*Time:* 10 a.m.
*Location:* Cellu Tissue Corporation, Natural Dam Mill, 4921 Route 58N, Gouverneur, NY 13642, Phone: (315) 287–7190.

The scoping document, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of the scoping document will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Depending on the extent of comments received, Scoping Document 2 may or may not be issued.

**Site Visit**

Cellu Tissue Corporation will conduct a site visit of the project at 3 p.m. on Tuesday, June 26, 2007. All participants should meet at the Cellu Tissue Corporation Natural Dam Mill, 4921 Route 58N, Gouverneur, New York 13642. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Nicholas Barr of Cellu Tissue Corporation at (315) 287–7190 on or before June 26, 2007.

**Scoping Meeting Objectives**

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and the scoping document are included in item n of this document.

**Meeting Procedures**

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10806 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 199–205]**

### South Carolina Public Service Authority; Notice of Settlement Agreement and Soliciting Comments

May 30, 2007.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* P–199–205.

c. *Date filed:* May 24, 2007.

d. *Applicant:* South Carolina Public Service Authority (SCPSA).

e. *Name of Project:* Santee Cooper Hydroelectric Project.

f. *Location:* On the Santee and Cooper Rivers in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties in South Carolina, about 50 miles north of Charleston and 60 miles southeast of Columbia, South Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. Applicant Contact: Mr. John Dulude, P.E., South Carolina Public Service Authority, One Riverwood Plaza, P.O. Box 2946101, Moncks Corner, SC 29461–2901; (843) 761–4046.

i. *FERC Contact:* Monte TerHaar at *monte.terhaar@ferc.gov*, or (202) 502–6035.

j. *Deadline for filing comments:* June 18, 2007. Reply comments due July 3, 2007.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. SCPSA filed a settlement on behalf of itself, the U.S. Fish and Wildlife Service (FWS), and the South Carolina Department of Natural Resources (SCDNR). The purpose of the settlement agreement is to resolve, among the signatories, issues associated with issuance of a new license for the project, including diadromous fish passage and management, as well as instream flows for the Santee River. Major issues covered in the settlement include: (1) FWS's revised section 18 fishway prescription; (2) withdrawal of FWS's preliminary section 4(e) conditions; (3) minimum flow releases from the Santee Dam to the Santee River, including establishment of a technical advisory committee; (4) development of a low flow operating protocol; and (5) twelve measures to address waterfowl management and recreation boating at the Santee National Wildlife Refuge.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10807 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 12796–000, Project No. 12797–000, Project No. 12801–000]**

### City of Wadsworth, OH, Rathgar Development Associates, LLC, Kentucky Municipal Power Agency; Notice of Competing Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

May 30, 2007.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary Permit (Competing).

b. *Applicants, Project Numbers, and Dates Filed:*

City of Wadsworth, Ohio, filed the application for Project No. 12796–000 on April 24, 2007.

Rathgar Development Associates, LLC filed the application for Project No.12797–000 on April 26, 2007.

Kentucky Municipal Power Agency filed the application for Project No.12801–000 on May 18, 2007.

c. *Name of the project is Robert C. Byrd Dam Project.* The project would be located on the Ohio River in Mason County, West Virginia, and Gallia County, Ohio. It would use the U.S. Army Corps of Engineers' existing Robert C. Byrd Dam.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For the City of Wadsworth, Ohio: Mr. Phillip E. Meier, Chief Information Officer, American Municipal Power—Ohio, 2600 Airport Road, Columbus, OH 43219, (614) 416–8135. Rathgar Development Associates, LLC: Mr. Paul V. Nolan, Esquire, 5515 North 17th Street, Arlington, VA 22205, (703) 534–5509. For the Kentucky Municipal Power Agency: Francis E. Francis, Esquire, Spiegel and McDiarmid, 1333 New Hampshire Avenue, Washington, DC 20036, (202) 879–4000.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Please include the project number (P–12796–000, P–12797–000, or P–12801–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by the City of Wadsworth, Ohio, would utilize the U.S. Army Corps of Engineers' existing Robert C. Byrd Dam and consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing two generating units with a total installed capacity of 48 megawatts, (3) a proposed 138 kV transmission line, and (4) appurtenant facilities. The City of Wadsworth's, project would have an average annual generation of 247 gigawatt-hours.

The project proposed by Rathgar Development Associates, LLC would utilize the U.S. Army Corps of Engineers' Robert C. Byrd Dam and consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing eight generating units with a total installed capacity of 46 megawatts, (4) a proposed 8,200-foot-long, 138-kV transmission line, and (5) appurtenant facilities. Rathgar Development Associates, LLC's project would have an average annual generation of 220 gigawatt-hours.

The project proposed by the Kentucky Municipal Power Agency would utilize the U.S. Army Corps of Engineers' Robert C. Byrd Dam and consist of: (1) A proposed intake structure, (2) a proposed powerhouse containing two generating units with a total installed capacity of 44 megawatts, (3) a proposed 1.7-mile-long, 138 kV transmission line, and (4) appurtenant facilities. The Kentucky Municipal Power Agency's project would have an average annual generation of 212 gigawatt-hours.

i. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCONLINESUPPORT@FERC.GOV*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item e above.

j. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

k. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

l. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

m. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', and ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10808 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2503–116]**

### Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

May 30, 2007.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project Use of Project Lands and Waters.

b. *Project No:* 2503–116.

c. *Date Filed:* May 18, 2007.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Keowee-Toxaway Project (Keowee Development).

f. *Location:* Lake Keowee is located in Pickens and Oconee County, South Carolina. This project does not occupy any tribal or Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Joe Hall, Manager Lake Service; Duke Energy Carolinas, LLC; P.O. Box 1006; Charlotte, NC 28201–1006; 704–382–8576.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346 or by e-mail: *Isis.Johnson@ferc.gov*.

j. *Deadline for filing comments and or motions:* June 29, 2007.

All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Application:* Duke Energy Carolinas, LLC (Duke), licensee for the Keowee-Toxaway Hydroelectric Project, has filed an application seeking authorization from the Federal Energy Regulatory Commission to lease to Keowee Falls Investment Group, LLC (Keowee Falls), 10.50 acres of project land located on Lake Keowee in Oconee County, South Carolina for access to the reservoir and the development of certain facilities that would serve the residents of Cliffs at Keowee Falls South Subdivision.

Keowee Falls proposes to develop residential marina facilities at thirteen lease areas throughout the site, consisting of a total 32 cluster docks with a total of 324 boat dock locations, two courtesy docks, and two access ramps. One of the proposed boat dock locations would be used to load and unload a water taxi. The proposal also includes 7,503 linear feet of riprap shoreline stabilization throughout the lease areas.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10809 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2244–016]**

### Energy Northwest; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 31, 2007.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to construct a permanent tailrace barrier.

b. *Project No.:* P–2244–016.

c. *Date Filed:* April 9, 2007.

d. *Applicant:* Energy Northwest.

e. *Name of Project:* Packwood Lake Project.

f. *Location:* The project is located in Lewis County, Washington, and within the Gifford Pinchot National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ms. Laura Schinnell, Energy Northwest, P.O. Box 968, Mail Drop 1030, Richland, WA 99342–0968.

i. *FERC Contact:* Diana Shannon, Telephone (202) 502–8887, and e-mail: *Diana Shannon@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* July 2, 2007.

*All documents (original and eight copies) should be filed with:* The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Energy Northwest proposes to install a permanent tailrace barrier within the existing tailrace canal for the purpose of preventing fish, both resident and anadromous, from traveling up the project tailrace and stilling basin. Such delays in migration could result in delayed spawning or pre-spawning mortality. Construction is planned for October 2007. The licensee has consulted with federal and state resource agencies in the barrier's design and in developing its proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10837 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

## Records Governing Off-the-Record Communications; Public Notice

May 30, 2007.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

EXEMPT

| Docket number | Date received | Presenter or requester |
|---|---|---|
| 1. CP07–8–001 | 5–23–07 | Dean Thiel. |
| 2. ER07–744–000 | 5–14–07 | Hon. John E. Baldacci. |
| 3. ER07–744–000 | 5–09–07 | Michael H. Michaud. |

EXEMPT—Continued

| Docket number | Date received | Presenter or requester |
|---|---|---|
| 4. Project No. 2216–000 | 5–15–07 | Hon. Hillary Rodham Clinton. |
| 5. Project No. 2216–000 | 5–25–07 | Hon. Charles E. Schumer. |
| 6. Project 2576–083 | 5–16–07 | Hon. Richard Blumenthal. |
| 7. Project No. 12571–000 | 5–17–07 | Mary Jane Parks. |

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E7–10813 Filed 6–5–07; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8322–1]**

### External Peer Review of Draft Final Report: ''Comparison of the Alternative Asbestos Control Method and the NESHAP Method for Demolition of Asbestos-Containing Buildings''

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of external peer review panel meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is announcing an external peer review panel meeting to review the draft Final Report for the Alternative Asbestos Control Method (AACM) Demonstration Project. EPA will use comments and recommendations from the expert panel meeting to finalize the draft report.

The U.S. EPA conducted a controlled demonstration to evaluate the AACM alongside the current National Emissions Standards for Hazardous Air Pollutants (NESHAP) method in a remote, secure location at Fort Chaffee, Arkansas. To facilitate side-by-side comparison, the demonstration used two similar structures with asbestos-containing materials. Additional information about this research project, including a description of the AACM and the project schedule, is available at *http://epa.gov/region6/6xa/asbestos.htm.*

**DATES:** A public comment period for the draft Final Report is currently open and will last until June 14, 2007. Members of the public may submit comments to *Regulations.gov* (see **SUPPLEMENTARY INFORMATION** below). The peer review panel meeting will begin on June 20, 2007, at approximately 11:15 a.m. and end at 4 p.m. on June 21, 2007. Members of the public may attend the peer review panel meeting. Time will be set aside on the morning of June 20, 2007 for registered attendees who wish to make oral comments (for more information refer to the instructions for registration below).

**ADDRESSES:** Eastern Research Group, Inc. (ERG), an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer review panel meeting to review this draft report. The external peer review panel meeting will be held at EPA's Andrew W. Breidenbach Environmental Research Center (AWBERC) located at 26 W. Martin Luther King Drive, Cincinnati, OH.

Observers may attend the peer review panel meeting by registering online at the Web site, *https://www2.ergweb.com/projects/conferences/region6/register.htm* or by calling ERG's conference line between the hours of 9 a.m. and 5:30 p.m. EDT at (781) 674–7374 or toll free at 800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations will be accepted on a first-come, first-served basis. The deadline for online pre-registration is June 13, 2007. If space allows, telephone and fax registrations will continue to be accepted after this date, including on-site registration. Time will be set aside to hear comments from observers, and individuals will be limited to a maximum of five minutes during the morning of the first day of the meeting. Please sign up for a time slot on the registration page, or if registering via telephone, inform ERG that you wish to make comments during the comment period. Public comments submitted to *Regulations.gov* by June 14, 2007 will be provided to the external peer review panel prior to the meeting.

The draft Final Report is available via the Internet at *http://epa.gov/region6/6xa/asbestos.htm* or *http://www.regulations.gov* under docket ID number EPA–HQ–ORD–2007–0362. Copies are not available from ERG and copies will not be available onsite.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding registration and logistics for the external peer review panel meeting should be directed to ERG, 110 Hartwell Avenue, Lexington, MA 02421–3136; *telephone:* (781) 674–7374 or toll free at 800–803–2833; or by faxing a registration request to facsimile: (781) 674–2906; e-mail *meetings@erg.com.*

If you have questions about the draft Final Report, contact Stephen Watkins, Office of Research and Development, Mail Code 8104–R, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–3744; *fax number:* (202) 565–2925, *E-mail: watkins.stephen@epa.gov.*

**SUPPLEMENTARY INFORMATION:** EPA has established an official public docket for this action under docket ID number EPA–HQ–ORD–2007–0362 on the Internet at *http://www.regulations.gov.* The public docket contains the draft Final Report and a list of charge questions that have been submitted to the external peer reviewers.

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2007–0362 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD Docket@epa.gov.*
- *Mail:* ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center (EPA/DC), Room 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2007–0362. Deliveries are only accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0362. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov*

or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

Dated: May 30, 2007.

**Jeffery Morris,**

*Acting Director, Office of Science Policy.*

[FR Doc. E7–10888 Filed 6–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–ORD–2007–0403; FRL–8322–7]**

## Human Studies Review Board; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency's (EPA or Agency) Office of the Science Advisor (OSA) announces a public meeting of the Human Studies Review Board (HSRB) to advise the Agency on EPA's scientific and ethical reviews of human subjects' research.

**DATES:** The public meeting will be held from June 27–June 29, 2007 approximately from 8:30 a.m. to approximately 5:30 p.m., Eastern Time.

*Location:* Environmental Protection Agency, Conference Center—Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Drive, Arlington, VA 22202.

*Meeting Access:* Seating at the meeting will be on a first-come basis. To request accommodation of a disability please contact the person listed under **FOR FURTHER INFORMATION CONTACT** at least 10 business days prior to the meeting, to allow EPA as much time as possible to process your request.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral comments for the HSRB to consider during the advisory process. Additional information concerning submission of relevant written or oral comments is provided in Unit I.D. of this notice.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes further information should contact Paul Lewis, EPA, Office of the Science Advisor, (8105R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8381; fax: (202) 564 2070; e-mail addresses: *lewis.paul@epa.gov.* General information concerning the EPA HSRB can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

**ADDRESSES:** Submit your written comments, identified by Docket ID No. EPA–HQ–ORD–2007–0403, by one of the following methods:

*Internet: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

*E-mail: ORD.Docket@epa.gov.*

*Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*Hand Delivery:* The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington DC. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0403. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**SUPPLEMENTARY INFORMATION:**

### I. Public Meeting

*A. Does This Action Apply to Me?*

This action is directed to the public in general. This action may, however, be of interest to persons who conduct or assess human studies, especially studies on substances regulated by EPA or to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of This Document and Other Related Information?*

In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC. The hours of operation are 8:30 AM to 4:30 PM EST, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or email the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm).*

EPA's position paper(s), charge/questions to the HSRB, and the meeting agenda will be available by early June 2007. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the regulations.gov Web site and the HSRB Internet Home Page at *http://www.epa.gov/osa/hsrb/.* For questions on document availability or if you do not have access to the Internet, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

a. Explain your views as clearly as possible.

b. Describe any assumptions that you used.

c. Provide copies of any technical information and/or data you used that support your views.

d. Provide specific examples to illustrate your concerns and suggest alternatives.

e. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*D. How May I Participate in This Meeting?*

You may participate in this meeting by following the instructions in this section. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–ORD–2007–0403 in the subject line on the first page of your request.

a. *Oral comments.* Requests to present oral comments will be accepted up to June 20, 2007. To the extent that time permits, interested persons who have not pre-registered may be permitted by the Chair of the HSRB to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the HSRB is strongly advised to submit their request (preferably via email) to the person listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, Eastern Time, June 20, 2007 in order to be included on the meeting agenda and to provide sufficient time for the HSRB Chair and HSRB Designated Federal Officer (DFO) to review the agenda to provide an appropriate public comment period. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g. overhead projector, LCD projector, chalkboard). Oral comments before the HSRB are limited to five minutes per individual or organization. Please note that this limit applies to the cumulative time used by all individuals appearing either as part of, or on behalf of an organization. While it is our intent to hear a full range of oral comments on the science and ethics issues under discussion, it is not our intent to permit organizations to expand these time limitations by having numerous individuals sign up separately to speak on their behalf. If additional time is available, there may be flexibility in time for public comments. Each speaker should bring 25 copies of his or her comments and presentation slides for distribution to the HSRB at the meeting.

b. *Written comments.* Although you may submit written comments at any time, for the HSRB to have the best opportunity to review and consider your comments as it deliberates on its report, you should submit your comments at least five business days prior to the beginning of the meeting. If you submit comments after this date, those comments will be provided to the Board members, but you should recognize that the Board members may not have adequate time to consider those comments prior to making a decision. Thus, if you plan to submit written comments, the Agency strongly encourages you to submit such comments no later than noon, Eastern Time, June 20, 2007. You should submit your comments using the instructions in Unit I.C. of this notice. In addition, the Agency also requests that person(s) submitting comments directly to the docket also provide a copy of their comments to the person listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the length of written comments for consideration by the HSRB.

*E. Background*

a. *Topics for Discussion.* The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App.2 section 9. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (a) Research proposals and protocols; (b) reports of completed research with human subjects; and (c) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor.

The June 27–29, 2007 meeting of the Human Studies Review Board will address scientific and ethical issues surrounding:

- A research proposal from Carroll-Loye Biological Research to evaluate the efficacy of two conditionally registered products containing picaridin in repelling mosquitoes in the field.
- A research proposal from Insect Control & Research, Inc. to evaluate the efficacy of two unregistered products containing picaridin in repelling mosquitoes in the field.
- A completed study measuring the effects on human subjects of acute inhalation exposure to acrolein. Acrolein is an active ingredient used in biocides in agricultural and industrial water supply systems and is currently undergoing reregistration.
- Three completed clinical studies of the efficacy and side effects of 4-aminopyridine when used as a therapeutic agent to treat neurological

symptoms in patients with either spinal cord injury or multiple sclerosis. 4-aminopyridine is an active ingredient used in bird repellents that is currently undergoing reregistration.

• Extensive background materials concerning research to quantify the level of exposure received by people who mix, load, and apply pesticides. These materials, which were prepared by the Agricultural Handlers Exposure Task Force and by the Antimicrobial Exposure Assessment Task Force, generally explain the scope of the research programs being proposed by the Task Forces and describe the general scientific framework for conducting the research. In addition, each Task Force has provided Standard Operating Procedures which will guide the conduct of the studies.

The Board may also be reviewing draft HSRB reports for subsequent Board approval. Finally, the Board may also discuss planning for future HSRB meetings.

b. *Meeting Minutes and Reports.* Minutes of the meeting, summarizing the matters discussed and recommendations, if any, made by the advisory committee regarding such matters will be released within 90 calendar days of the meeting. Such minutes will be available at *http://www.epa.gov/osa/hsrb/* and *http://www.regulations.gov.* In addition, information concerning a Board meeting report, if applicable, can be found at *http://www.epa.gov/osa/hsrb/* or from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 31, 2007.

**Kevin Teichman,**

*Acting EPA Science Advisor.*

[FR Doc. E7–10859 Filed 6–5–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2006–1004; FRL–8113–5]**

## Pesticides; Draft Guidance for Pesticide Registrants on Antimicrobial Pesticide Products With Anthrax-Related Claims

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency is announcing the availability of, and seeking public comment on, a draft Pesticide Registration Notice entitled, ''Guidance for Antimicrobial Pesticide Products With Anthrax-Related Claims.'' PR notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important policies, procedures, and registration related decisions. This particular notice would, once final, provide guidance to prospective applicants of antimicrobial products that make labeling claims to inactivate Bacillus anthracis (anthrax) spores (hereafter referred to as ''anthrax-related products'').

**DATES:** Comments must be received on or before September 4, 2007.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–1004, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2006–1004. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, Antimicrobials Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5448; fax number: (703) 308–6467; e-mail address: *kempter.carlton@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me*

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides and federal, state, and local government agencies and private institutions or organizations who are interested in bio-decontamination chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the

disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2006–1004. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. What Guidance Does this PR Notice Provide?**

This draft PR Notice provides guidance to the registrant concerning antimicrobial products that make labeling claims to ''inactivate Bacillus anthracis (anthrax) spores'' (hereafter referred to as ''anthrax-related products''). In summary, this notice specifies that in order for a product to qualify for a claim of inactivating anthrax spores, an anthrax-related product should be:

1. Supported by specific sporicidal efficacy studies that are acceptable to EPA; and

2. Subject to specific terms and conditions of registration that limit the use of these products to certain trained persons. Prospective applicants are encouraged to follow the guidance in this notice and consult with EPA prior to applying for registration or amendment of a product when seeking such a claim. This guidance should help the United States be better prepared to respond to the intentional, accidental or natural introduction of anthrax spores by helping to assure that anthrax-related products bear appropriate labeling and are effective when used as directed.

In October 2001, when several letters containing Bacillus anthracis (anthrax) spores were introduced into the U.S. Postal Service mail system causing extensive contamination to dozens of buildings, no antimicrobial products were specifically registered for inactivating this particular pathogen. Since that time, the EPA has conducted extensive research and coordinated across the federal government to determine which efficacy test methods would be appropriate for demonstrating the effectiveness of antimicrobial products for inactivating B. anthracis spores. Guidance on acceptable efficacy test methods will be made available in a separate document. EPA's Office of Pesticide Programs has also developed guidance on the terms and conditions of registration for the labeling of these products. EPA intends to limit the use of these products to certain groups of trained persons. This notice is aimed primarily at applicants and registrants, but may also be of interest to other federal, state, and local government agencies, academic institutions, and other interested parties.

**III. Do PR Notices Contain Binding Requirements?**

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and to pesticide registrants. While the requirements in the statutes and Agency regulations are binding on EPA and the applicants, this PR Notice is not binding on pesticide registrants, and EPA may depart from the guidance where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Decontamination.

Dated: May 21, 2007.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

[FR Doc. E7–10694 Filed 6–5–07; 8:45 am]

**BILLING CODE 6560–50–S**

## OFFICE OF SCIENCE AND TECHNOLOGY POLICY

### Meeting of the President's Council of Advisors on Science and Technology

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

*Dates and Place:* June 25, 2007, Arlington, VA. The meeting will be held in Room 1235 of the National Science Foundation at 4201 Wilson Boulevard, Arlington, Virginia 22230.

Note that due to security requirements at the National Science Foundation, anyone planning to attend must pre-register no later than close of business on Thursday, June 21, 2007 by going to the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html* or by calling 703–536–4996.

*Type of Meeting:* Open. Further details on the meeting agenda will be posted on the PCAST web site given above.

*Proposed Schedule and Agenda:* The President's Council of Advisors on Science and Technology (PCAST) is scheduled to meet in open session on Monday, June 25, 2007, at approximately 9 a.m. The PCAST subcommittee on nanotechnology has convened a group of experts from academia, industry, and non-governmental organizations to provide an overview of nanotechnology applications and implications. The

PCAST subcommittee is tentatively scheduled to hear presentations on applications of nanotechnology, with specific examples of nanotechnology-based innovation and commercialization across a range of products and industries. The PCAST also is tentatively scheduled to hear presentations on the environmental, health, and safety implications of nanotechnology from a range of perspectives. The presentations are intended to inform, in part, the Council's review of the National Nanotechnology Initiative and assessment of progress towards realizing the benefits of nanotechnology advances. This session will end at approximately 5 p.m. Additional information and the final agenda will be posted at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.*

*Public Comments:* There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Celia Merzbacher, PCAST Executive Director, at (202) 456–7116, or fax your request/comments to (202) 456–6021.

**FOR FURTHER INFORMATION CONTACT:** For information regarding time, place and agenda, please call Celia Merzbacher at (202) 456–7116, prior to 3 p.m. on Thursday, June 21, 2007. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html.* Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

**SUPPLEMENTARY INFORMATION:** The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

**Celia Merzbacher,**

*PCAST Executive Director, Office of Science and Technology Policy.*

[FR Doc. E7–10822 Filed 6–5–07; 8:45 am]

**BILLING CODE 3170–W4–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 29, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information, subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 6, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** You may submit all Paperwork Reduction Act (PRA) comments by e-mail or U.S. post mail. To submit you comments by e-mail, send them to *PRA@fcc.gov.* To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 and Jasmeet Seehra, Office of Management and Budget (OMB) Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* or via fax (202) 395–5167.

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection(s), send an e-mail to *PRA@fcc.gov* or contact Cathy Williams at 202–418–2918.

**SUPPLEMENTARY INFORMATION:** *OMB Control Number:* 3060–1089.

*Title:* Emergency Access Notice of Proposed Rulemaking (NPRM) and Internet-Protocol (IP) Relay/ Video Relay Service (VRS) Fraud Further Notice of Proposed Rulemaking (FNPRM); VRS Interoperability FNPRM, CG Docket No. 03–123.

*Form No.:* Not applicable.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local or Tribal Government.

*Number of Respondents:* 8—(6 of which provides VRS and IP Relay service; 2 of which provides VRS).

*Estimated Time per Response:* 4 to 1,000 hours.

*Frequency of Response:* Annual reporting requirement; One-time reporting requirement; On occasion reporting requirement; Recordkeeping requirement; Monthly reporting requirement; Third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 34,688 hours.

*Total Annual Costs:* None.

*Nature and Extent of Confidentiality:* An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

*Privacy Act Impact Assessment:* No impact(s).

*Needs and Uses:* **Note:** The Commission is revising information collection 3060–1089 to consolidate/merge the information collection requirements of 3060–1091 into this collection per the Office of Management and Budget's (OMB) request. Presently, the Commission concludes that these two proposed information collections are similar because these collections involve same respondents and contain similar data of identifiable information in order: (1) To facilitate 911 emergency calls; (2) to improve interoperability for VRS and IP Relay services; and (3) to curtail misuse of VRS and IP Relay services. The Commission does not

collect this information. The Commission requires respondents to collect this information. Once OMB approval is received for the consolidated/merged information collection requirements, the Commission will eliminate OMB information collection No. 3060–1091.

On November 30 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 03–123, which addressed the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (TRS), namely VRS and IP Relay Service. The Commission sought to adopt means to ensure that such calls promptly reach the appropriate emergency service provider. By doing so, the *NPRM* sought comment on various issues: (1) Whether the Commission should require VRS and IP Relay service providers to establish a registration process in which VRS and IP Relay service users provide, in advance, the primary location from which they will be making VRS or IP Relay service calls (the Registered Location), so that a communication assistant (CA) can identify the appropriate Public Safety Answering Point (PSAP) to contact; (2) should VRS and IP Relay providers be required to register their customers and obtain a Registered Location from their customers so that they will be able to make the outbound call to the appropriate PSAP; (3) whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer VRS or IP Relay service terminal or equipment to their registered location; (4) any privacy considerations that might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services; (5) whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of information that providers should be able to obtain; (6) whether the Commission should require VRS and IP Relay providers to provide appropriate warning labels for installation on customer premises equipment (CPE) used in connection with VRS and IP Relay services; (7) whether the Commission should require VRS and IP Relay providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood the advisory that E911 service may not be available through VRS and IP Relay or may be in some way limited by comparison to traditional E911 service; and (8) how the Commission may ensure that providers have updated location information, and the respective obligations of the providers and the consumers in this regard.

On May 8, 2006, the Commission released the *Misuse of IP Relay Service and VRS Further Notice of Proposed Rulemaking*, (*IP Relay Fraud FNPRM*), CG Docket No. 03–123, FCC 06–58 which contained the following information collection requirements involving user registration, *e.g.*, callers register to use VRS and IP Relay and provide their requisite information as necessary: The *IP Relay Fraud FNPRM* sought comment on: (1) Whether IP Relay and VRS providers should be required to implement user registration system in which users provide certain information to their providers, in advance, as a means of curbing illegitimate IP Relay and VRS calls; (2) what information should be required of the user; (3) whether there are steps that could be taken, or technology implemented, to prevent the wrongful use of registration information; and (4) whether the Commission should require VRS and IP Relay providers to maintain records of apparently illegitimate calls that were terminated by the providers.

On May 9, 2006, the Commission released the *VRS Interoperability Declaratory Ruling and Further Notice of Proposed Rulemaking* (*Interoperability FNPRM*), In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–57. In the *Interoperability FNPRM*, the Commission sought comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. The Commission also sought comment on nature of the proxy numbers that might be used and how they might be administered. The Commission sought comment on the role of the Commission in creating and maintaining the database. In the *Interoperability FNPRM*, the Commission recognized: (a) That when a hearing person contacts a VRS user by calling a VRS provider, the calling party has to know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA (b) that because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time; (c) that some VRS providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP address of their customers, even if a particular person's IP address is dynamic and changes; (d) that databases are maintained by the service provider and, generally, are not shared with other service providers; and (e) that a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number. The *Interoperability FNPRM* contained the following information collection requirements involving an open, global database of VRS proxy numbers. The *Interoperability FNPRM* sought comment on: (1) Whether VRS providers should be required to provide information to populate an open, global database of VRS proxy numbers and to keep the information current; (2) whether the Interstate TRS Fund administrator, a separate entity, or a consortium of service providers should be responsible for the maintenance and operation of an open, global database of VRS proxy numbers; (3) whether Deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers should be linked to the North American Numbering Plan (NANP) that would remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another; (4) whether participation by service providers should be mandatory so that all VRS users can receive incoming calls.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–10897 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

May 24, 2007.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this

opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 6, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Jasmeet K. Seehra, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3123, or via fax at 202–395–5167 or via Internet at *Jasmeet_K._Seehra@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: *3060–0984.*

*Title:* Section 90.35(b)(2), Industrial/Business Pool and Section 90.175(b)(1), Frequency Coordinator Requirements.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit and state, local or tribal government.

*Number of Respondents:* 6,949 respondents; 6,949 responses.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* One-time reporting requirement and third party disclosure requirement.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 6,949 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* The Commission will submit this extension (no change in the reporting requirements or third party disclosure requirements) to the OMB after this 60 day comment period to obtain the full three-year clearance from them.

Sections 90.35 and 90.175 require third party disclosure requirements by applicants proposing to operate a land mobile radio station. If they have service contours that overlap an existing land mobile station they are required to obtain written concurrence from the frequency coordinator associated with the industry for which the existing station license was issued, or the written concurrence of the licensee of the existing station.

These requirements will be used by Commission personnel in evaluating the applicant's need for such frequencies and to minimize the interference potential to other stations operating on the proposed frequencies.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–10971 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2815]**

### Petitions for Reconsideration of Action in Rulemaking Proceeding

May 24, 2007.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by June 21, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones (WT Docket No. 01–309).

Petitions for Waiver of Section 20.19 of the Commission's Rules.

*Number of Petitions Filed:* 6.

*Subject:* In the Matter of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Coal Run, Kentucky and Clinchco, Virginia) (MB Docket No. 04–319).

*Number of Petitions Filed:* 1.

*Subject:* In the Matter of Universal Service Contribution Methodology (WC Docket No. 06–122).

Federal-State Joint Board on Universal Service (CC Docket No. 96–45).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–10720 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2817]**

### Petition for Reconsideration of Action in Rulemaking Proceeding

May 30, 2007.

A Petition for Reconsideration has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by June 21, 2007. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

*Subject:* In the Matter of Implementation of Sections 309(j) and 337 of Commissions Act of 1934 as Amended (WT Docket No. 99–87).

Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies (RM–9332).

*Number of Petitions Filed:* 1.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. E7–10900 Filed 6–5–07; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final notice of submission for OMB review.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Federal Maritime Commission hereby gives notice that it has submitted to the Office of Management and Budget a request for an extension of the existing collection requirements under 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms. The FMC has requested an extension of an existing collection as listed below.

**DATES:** Written comments on this final notice must be submitted on or before July 6, 2007.

**ADDRESSES:** Comments should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Maritime Commission, 725–17th Street, NW., Washington, DC 20503, *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806, and to Peter J. King, Director, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800), *administration@fmc.gov*. Please reference the information collection's title and OMB number in your comments.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and instructions, or copies of any comments received, contact Jane Gregory, Management Analyst, Office of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (Telephone: (202) 523–5800), *jgregory@fmc.gov*.

**SUPPLEMENTARY INFORMATION:** A notice that FMC would be submitting this request was published in the **Federal Register** on March 26, 2007, allowing for a 60-day comment period. No comments were received.

The FMC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Information Collection Open for Comment**

*Title:* 46 CFR 515—Licensing, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries and Related Forms.

*OMB Approval Number:* 3072–0018 (Expires July 31, 2007).

*Abstract:* Section 19 of the Shipping Act of 1984 (the ''Act''), 46 U.S.C. 40901–40904 (2006), as modified by Public Law 105–258 (The Ocean Shipping Reform Act of 1998) and Section 424 of Public Law 105–383 (The Coast Guard Authorization Act of 1998), provides that no person in the United States may act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance or other surety in a form and amount determined by the Commission to ensure financial responsibility. The Commission has implemented the provisions of section 19 in regulations contained in 46 CFR 515, including financial responsibility forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, and its related license application form, FMC–18.

*Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Needs and Uses:* The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with shipping statutes and regulations and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing.

*Frequency:* This information is collected when applicants apply for a license or when existing licensees change certain information in their application forms.

*Type of Respondents:* The respondents are persons desiring to obtain a license to act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, a non-vessel-operating common carrier, or both.

*Number of Annual Respondents:* The Commission estimates a potential annual respondent universe of 4,765 entities.

*Estimated Time per Response:* The time per response for completing Application Form FMC–18 averages 2 hours. The time to complete a financial responsibility form averages 20 minutes.

*Total Annual Burden:* The Commission estimates the total annual person-hour burden at 3,596 person-hours.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7–10898 Filed 6–5–07; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov*).

*Agreement No.:* 011741–011.

*Title:* U.S. Pacific Coast-Oceania Agreement.

*Parties:* A.P. Moller-Maersk A/S; Hamburg-Süd; and Hapag-Lloyd AG.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment changes the structure of the services operated under the agreement, deletes obsolete language, and provides for a new minimum duration of the agreement.

*Agreement No.:* 011794–007.

*Title:* COSCON/KL/YMUK/Hanjin/ Senator Worldwide Slot Allocation & Sailing Agreement.

*Parties:* COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

*Filing Party:* Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 555 West Fifth Street, 46th Floor; Los Angeles, CA 90013.

*Synopsis:* The amendment revises the vessel contributions and fleet capacities for K-Line and Yangming under the agreement. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: June 1, 2007.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7–10896 Filed 6–5–07; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder-Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants**

CNF International, Inc., 550 E. Carson Plaza Drive, #112, Carson, CA 90746. *Officers:* Paul Wang Lee, President (Qualifying Individual), Mi Ran Lee, Secretary.

Evangel Shipping, Inc., 10408 Daines Drive, Temple City, CA 91780. *Officer:* Xiujuan Lai, CEO (Qualifying Individual).

Champ International Shipping, Inc., 900 Kaighns Avenue, Camden, NJ 08104. *Officer:* Roy Barrington Hibbert, President (Qualifying Individual).

Cargois Inc., 2700 Coyle Avenue, Elk Grove Village, IL 60007. *Officers:* Souck-Sin Lee, Treasurer (Qualifying Individual), Jong Han Kwon, President.

Best Shipping Ever, Inc., 734 Grand Avenue, Unit C, Ridgefield, NJ 07657. *Officer:* Young S. Kim, President, (Qualifying Individual).

Golden Sea USA Inc., 155–06 So. Conduit Ave., Suite 200, Jamaica, NY 11434. *Officers:* Zhang, Shen, Vice President, (Qualifying Individual), Xia Fang, President.

Dyna Logistics Inc., 2415 S. Sequoia Drive, Compton, CA 90220. *Officers:* Alfie Chi-Yang, Director (Qualifying Individual), Michelle Yang, Director/Secretary.

Siboney Shipping LLC, 10943 NW 122 Street, Medley, FL 33178. *Officer:* Kaye Graham, Owner (Qualifying Individual).

**Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

AHC Logistics Cargo Consultant, Inc., 11591 NW 50th Terrace, Doral, FL 33178. *Officers:* Alberto Jose Hernandez Crassus, President (Qualifying Individual), Amy Aracely Vega, Vice President.

Express International Cargo, Corp., dba Express Ocean Services, 7220 NW 36 Street, Suite 300, Miami, FL 33166. *Officer:* Carlos Adolfo Marzol, President (Qualifying Individual).

Salviati and Santori Enterprises Inc., 10 East Merrick Road, Suite 200, Valley Stream, NY 11580, *Officers:* Richard Cazan-Cassini, Exec. Vice Pres. (Qualifying Individual), Francesco Santori, President.

IPPCO Global Services, Inc., 14589 Industry Circle, La Mirada, CA 90637. *Officers:* John W. Gample, III, Secretary (Qualifying Individual), Dina T. Gample, President.

Advanced Maritime Transports, Inc. dba AMT, 16800 Greenspoint Park Drive, Suite 170N, Houston, TX 77030. *Officers:* William E. Netzinger, III, President (Qualifying Individual), Alain Vedrines, Director.

Dated: June 1, 2007.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. E7–10899 Filed 6–5–07; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Environmental Health/Agency for Toxic Substance and Disease Registry; The Health Department Subcommittee of the Board of Scientific Counselors, CDC, National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference Meeting

*Notice of Cancellation:* This notice was published in the **Federal Register** on May 4, 2007, Volume 72, Number 86, page 25318. The meeting previously scheduled to convene on June 4, 2007 has been cancelled.

*Contact Person for More Information:* Shirley D. Little, Committee Management Specialist, NCEH/ATSDR, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303; telephone 404/498–0615, fax 404/498–0059; E-mail: *slittle@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 30, 2007.

**Elaine L. Baker,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E7–10880 Filed 6–5–07; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2000E–1253]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; RAPLON

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for RAPLON and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period

forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product RAPLON (Rapacuronium Bromide). RAPLON is indicated as an adjunct to general anesthesia to facilitate tracheal intubation, and to provide skeletal muscle relaxation during surgical procedures. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for RAPLON (U.S. Patent No. 5,418,226) from Akzo Nobel N.V., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of RAPLON represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for RAPLON is 1,724 days. Of this time, 1,304 days occurred during the testing phase of the regulatory review period, while 420 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: November 30, 1994. The applicant claims October 31, 1994, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was November 30, 1994, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: June 25, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for RAPLON (NDA 20–984) was initially submitted on June 25, 1998.

3. *The date the application was approved*: August 18, 1999. FDA has verified the applicant's claim that NDA 20–984 was approved on August 18, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 126 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by August 6, 2007. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 3, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 7, 2007.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E7–10853 Filed 6–5–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2007N–0215]**

### Joint Meeting of the Endocrinologic and Metabolic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committees*: Endocrinologic and Metabolic Drugs Advisory Committee and the Drug Safety and Risk Management Advisory Committee.

*General Function of the Committees*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on July 30, 2007, from 8 a.m. to 5 p.m.

*Addresses*: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select ''2007N–0215— Thiazolidinedione'' and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, by close of business on July 23, 2007. All comments will be posted without change, including any personal information provided. Comments received on or before July 23, 2007, will be provided to the committee before the meeting.

*Location*: Holiday Inn Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel telephone number is 301–948–8900.

*Contact Person*: Cathy A. Miller, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1099), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Cathy.Miller1@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), codes 3014512536 and 3014512535. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously

announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

*Agenda*: The Endocrinologic and Metabolic Drugs and the Drug Safety and Risk Management Advisory Committees will meet in joint session to discuss the cardiovascular ischemic/thrombotic risks of the thiazolidinediones, with focus on rosiglitazone, as presented by FDA and GlaxoSmithKline.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2007 and scroll down to the appropriate advisory committee link.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 6, 2007. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2:30 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 28, 2007. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 29, 2007.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact John Lauttman, 301–827–7001, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 31, 2007.

**Randall W. Lutter,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E7–10850 Filed 6–5–07; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine SEP.

*Date:* June 12, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Mohan Viswanathan, PhD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6705 Democracy Blvd., 1 Democracy Plaza, Rom 1084, MSC 4874, Bethesda, MD 20892–4874, 301–435–0829, *viswanathanm@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2794 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, T–SEP.

*Date:* June 26, 2007.

*Time:* 10 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 1068, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John R. Glowa, PhD, Scientific Review Administrator, National Center for Research Resources, or National Institutes of Health, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov*.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, CR–SEP.

*Date:* July 10, 2007.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John R. Glowa, PhD, Scientific Review Administrator, National Institutes of Health, NCRR/ or 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1078–MSC 4874, Bethesda, MD 20892–4874, 301–435–0807, *glowaj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389 Research Infrastructure,

93.306, 93.333, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2795 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–07–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Enabling Technologies for Tissue Engineering and Regenerative Medicine.

*Date:* July 18, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

*Contact Person:* David A. Wilson, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892–7924, 301–435–0299, *wilsonda2@nhlbi.nih.gov*.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Ancillary Studies in Clinical Trials.

*Date:* July 19, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hills Road, Bethesda, MD 20814.

*Contact Person:* Yingying Li-Smerin, MD, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov*.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Patient Oriented Research (K23, 24, and 25's) and Career Enhancement Award for Stem Cell Research.

*Date:* July 26–27, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard Marriott Crystal City, 2899 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Mark Roltsch, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 29, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2797 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Ancillary Clinical Research Studies.

*Date:* June 27, 2007.

*Time:* 12 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Predict Outcomes in Diabetes.

*Date:* June 28, 2007.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nutrition and Metabolic Studies in Youth with Type 1 DM: SEARCH Ancillary Study.

*Date:* July 16, 2007.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Paul A. Rushing, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Chronic Kidney Disease Ancillary Studies.

*Date:* July 17, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–N 01.

*Date:* July 27, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 914, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2790 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–67, Review R03.

*Date:* June 12, 2007.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Raj K. Krishnaraju, PhD, MS, Scientific Review Administrator, Scientific Review Branch, National Inst of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Rm. 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–60, Review R21s.

*Date:* July 23, 2007.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel, 07–59, Review R21s.

*Date:* August 14, 2007.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Peter Zelazowski, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, National Inst of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–593–4861, *peter.zelazowski@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2791 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Autoimmune Diseases and Antigen Presentation.

*Date:* June 25, 2007.

*Time:* 11 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Respiratory Infections and Host Immunity.

*Date:* June 26, 2007.

*Time:* 11 a.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

*Contact Person:* Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIH/NIAID/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2793 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special

Emphasis Panel, Alcohol and Organ Failure. (telephone review).

*Date:* June 15, 2007.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892.

*Contact Person:* Katrina L. Foster, PhD, Scientific Review Administrator, National Inst on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 3037, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 92.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2796 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Alcohol, Puberty, and Adolescent Brain Development.

*Date:* July 24, 2007.

*Time:* 1 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Beata Buzas, PhD, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm 3041, Rockville, MD 20852, 301–443–0800, *bbuzas@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2798 Filed 6–5–07; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Drug Development and Therapeutics I, SBIR/STTR.

*Date:* June 27–28, 2007.

*Time:* 11 a.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, 301–435–1720, *shauhung@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

*Date:* June 28, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC 20005.

*Contact Person:* Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 594–6377, *sigmonh@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, HSOD Member Conflicts.

*Date:* June 28, 2007.

*Time:* 3:30 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Steven H. Krosnick, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *krosnics@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, ZRG1 RUS A 51 Nephrology and Urology PAR 06–113.

*Date:* July 2–3, 2007.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Daniel F. McDonald, PhD, Scientific Review Administrator, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

*Date:* July 2, 2007.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Suzanne L. Forry-Schaudies, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 451–0131, *forryscs@csr.nih.gov.*

*Name of Committee:* Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Musculoskeletal Tissue Engineering Study Section.

*Date:* July 8–10, 2007.

*Time:* 6 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov.*

*Name of Committee:* AIDS and Related Research Integrated Review Group, AIDS Immunology and Pathogenesis Study Section.

*Date:* July 9, 2007.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Washington, Pennsylvania Avenue at 15th Street, NW., Washington, DC 20004.

*Contact Person:* Shiv A. Prasad, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Fellowships: Bioengineering and Imaging.

*Date:* July 9, 2007.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* John Firrell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, MSC 7854, Bethesda, MD 20892, 301–435–2598, *firrellj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, SBIR Aging.

*Date:* July 9, 2007.

*Time:* 3 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Francois Boller, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5040Q, MSC 7843, Bethesda, MD 20892, 301–435–1019, *bollerf@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 30, 2007.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 07–2792 Filed 6–5–07; 8:45am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given that the Substance Abuse and Mental Health Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council will meet on June 21, 2007 from 11 a.m. to 12 p.m. via teleconference.

The meeting will include the review, discussion, and evaluation of grant applications. Therefore, the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site at *http://www.samhsa.gov/council/csap/csapnac.aspx*, or by contacting Ms. Tia Haynes, Executive Secretary, CSAP National Advisory Council (see contact information below).

*Committee Name:* Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention National Advisory Council.

**DATES:** *Date/Time:* Thursday, June 21, 2007, 11 a.m. to 12 p.m.: Closed.

*Place:* 1 Choke Cherry Road, Room 4–1058, Rockville, Maryland 20857.

**FOR FURTHER INFORMATION CONTACT:** *Contact:* Tia Haynes, Executive Secretary, CSAP National Advisory Council, 1 Choke Cherry Road, Room 4–1066, Rockville, Maryland 20857, *Telephone:* (240) 276–2436; *Fax:* (240) 276–2430, *E-mail: tia.haynes@samhsa.hhs.gov.*

Dated: May 31, 2007.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. E7–10879 Filed 6–5–07; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council on June 28, 2007.

The meeting is open and will include discussion of the Center's policy issues, and current administrative, legislative, and program developments.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the CSAT Council Executive Secretary, Ms. Cynthia Graham (see contact information below), to make arrangements to attend, comment or to request special accommodations for persons with disabilities.

The meeting will also include the review, discussion, and evaluation of grant applications reviewed by Initial Review Groups. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained as soon as possible after the meeting, either by accessing the SAMHSA Committee Web site, *http://www.nac.samhsa.gov/CSAT/csatnac.apx*, or by contacting Ms. Graham. The transcript for the open session of the meeting will also be available on the SAMHSA Committee Web site within three weeks after the meeting.

*Committee Name:* Substance Abuse and Mental Health Services Administration CSAT National Advisory Council.

*Date/Time/Type:* June 28, 2007. From 9 a.m.–9:30 a.m.: Closed. From 9:40 a.m.–4:30 p.m.: Open.

*Place:* 1 Choke Cherry Road, Sugarloaf and Seneca Conference Rooms, Rockville, Maryland 20857.

*Contact:* Cynthia Graham, M.S., Executive Secretary, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036, Rockville, MD 20857, *Telephone:* (240) 276–1692, *fax:* (240) 276–1690, *e-mail: cynthia.graham@samhsa.hhs.gov.*

Dated: May 31, 2007.

**Toian Vaughn,**

*Committee Management Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. E7–10867 Filed 6–5–07; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5124–N–09]**

### Notice of Proposed Information Collection for Public Comment; Consolidated Public Housing Certificate of Completion

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below

will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments due date:* August 6, 2007.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000

**FOR FURTHER INFORMATION CONTACT:** Aneita Waites, (202) 708–0614, extension 4114. (This is not a toll-free number) or e-mail at *Aneita_L._Waites@hud.gov*.

**SUPPLEMENTARY INFORMATION:** The Department will request an extension of and submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Consolidated Public Housing Certificate of Completion.

*OMB Control Number:* 2577–0021.

*Description of the need for the information and proposed use:* Public Housing Agencies (PHAs) are required to certify to HUD that contract requirements and standards have been satisfied in a specific project development and that HUD may authorize payment of funds due the contractor/developer.

*Agency form numbers, if applicable:* None.

*Members of affected public:* State, Local or Tribal Governments.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* 58 respondents reporting, one hour average per response, 58 hours for a total reporting burden.

*Status of the proposed information collection:* Extension of a previously approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 30, 2007.

**Merrie Nichols-Dixon,**

*Deputy Director, Office of Coordination and Compliance Division.*

[FR Doc. E7–10828 Filed 6–5–07; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Walton Development LLC Residential Project, City of Redlands, San Bernardino County, CA

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of environmental assessment (EA) and receipt of an application for incidental take permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce that Walton Development LLC (applicant) has applied for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act) of 1973, as amended. We are considering issuing a 5-year permit to the applicant that would authorize take of the federally endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*; ''SBKR''). The proposed permit would authorize the take of individual SBKR. The applicant needs the permit because take of SBKR could occur during the applicant's proposed construction of a residential and light industrial development on a 42.5-acre site in the City of Redlands, San Bernardino County, California. The permit application includes a proposed habitat conservation plan (HCP), which describes the proposed action and the measures that the applicant will undertake to mitigate take of the SBKR.

**DATES:** We must receive any written comments on or before August 6, 2007.

**ADDRESSES:** Send written comments to Mr. Jim Bartel, Field Supervisor, Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92011. You also may send comments by facsimile to (760) 918–0638.

**FOR FURTHER INFORMATION CONTACT:** Ms. Karen Goebel, Assistant Field Supervisor (see **ADDRESSES**), (760) 431–9440.

**SUPPLEMENTARY INFORMATION:**

#### Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address and at the San Bernardino County Libraries. Addresses for the San Bernardino County Libraries are: (1) 27167 Base Line, Highland, CA 92346; (2) 25581 Barton Rd., Loma Linda, CA 92354; (3) 1870 Mentone Boulevard, Mentone, CA 92359; and (4) 104 West Fourth Street, San Bernardino, CA 92415.

#### Background

Section 9 of the Act (16 U.S.C. 1531 et seq.) prohibits the ''take'' of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act to include ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' We may, under limited circumstances, issue permits to authorize incidental take (i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The applicant is proposing development of residential and light industrial facilities on a 42.5-acre site. The site is located southwest and southeast of the intersection of Pioneer Avenue and Judson Street in the City of Redlands, San Bernardino County, California. The proposed project site is surrounded by a mix of active and abandoned citrus orchards, and an active municipal airport is located approximately 0.25 mile north of the project site.

Based on focused surveys, 3.1 acres of the site are considered occupied by the SBKR. The Service has determined that the proposed development would result in incidental take of the SBKR. No other federally listed species are known to occupy the site.

To mitigate take of SBKR on the project site, the applicant proposes to purchase credits towards conservation in perpetuity of nine (9) acres of

conservation credits from the Cajon Creek Conservation Bank in eastern San Bernardino Valley. The conservation bank collects fees that fund a management endowment to ensure the permanent management and monitoring of sensitive species and habitats, including the SBKR.

Our EA considers the environmental consequences of three alternatives: (1) The Proposed Project Alternative, which consists of issuance of the incidental take permit and implementation of the HCP; (2) the On Site Conservation Alternative, which consists of a reduced project footprint and conservation of SBKR within the proposed project site; and (3) the No Action Alternative, which would result in no impacts to SBKR and no conservation.

**National Environmental Policy Act**

Proposed permit issuance triggers the need for compliance with the National Environmental Policy Act (NEPA). Accordingly, a draft NEPA document has been prepared. We are the lead agency responsible for compliance under NEPA. As NEPA lead agency, we provide notice of the availability and make available for public review the EA.

**Public Review**

We invite the public to review the HCP and EA during a 60-day public comment period (see **DATES**).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

We provide this notice pursuant to section 10(a) of the Act and the regulations for implementing NEPA, as amended (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicant for the incidental take of the SBKR. We will make our final permit decision no sooner than 60 days after the date of this notice.

Dated: May 31, 2007.

**Alexandra Pitts,**

*Acting Deputy Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. E7–10881 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Record of Decision for the Final Bison and Elk Management Plan and Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service and the National Park Service, U.S. Department of the Interior, as lead agencies, announce the availability of a Record of Decision (ROD) for the final Bison and Elk Management Plan (Plan) and Environmental Impact Statement (EIS) for the National Elk Refuge and Grand Teton National Park/John D. Rockefeller, Jr., Memorial Parkway (Grant Teton National Park). The final Plan/EIS was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966; as amended; the National Park Service Management Policies of 2006; and the National Environmental Policy Act (NEPA). The final Plan/EIS was prepared in cooperation with the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS); the U.S. Department of Agriculture Forest Service; the Department of Interior Bureau of Land Management (BLM); and the State of Wyoming Game and Fish Department (WGFD). The final Plan/EIS describes our proposal for management of the Jackson bison and elk populations within their respective jurisdictions for 15 years. The effects of six alternatives for the management of bison and elk populations for the National Elk Refuge and Grand Teton National Park are disclosed in the final Plan/EIS and are described in the ROD. We adopted and plan to implement Alternative 4—Adaptively Manage Habitat and Populations.

**FOR FURTHER INFORMATION CONTACT:** For further information, or to request a copy of the final Plan/EIS or the ROD, contact Laurie Shannon, Planning Team Leader, Region 6, 134 Union Boulevard, Lakewood, Colorado 80228, 303–236–4317 (Phone); 303–236–4792 (Fax); *laurie_shanon@fws.gov* (e-mail). Additionally, a copy of the Final Plan/EIS may be obtained by writing to: Jackson Bison and Elk Management Planning Office, P.O. Box 510, Jackson, Wyoming 83001; Telephone: 307–733–9212, or E-mail: *bisonelk_planning@fws.gov* or by download from the project Web site: *http://www.bisonandelkplan.fws.gov*.

**SUPPLEMENTARY INFORMATION:** The National Elk Refuge and Grand Teton National Park are located north of Jackson, Wyoming. Together with the Bridger-Teton National Forest, they make up most of the southern half of the Greater Yellowstone Ecosystem. The National Elk Refuge comprises approximately 24,700 acres, Grant Teton National Park comprises 309,995 acres, and the John D. Rockefeller Jr., Memorial Parkway is approximately 23,777 acres. The Jackson bison and elk herds make up one of the largest concentrations of free-ranging ungulates in North America. Currently, these herds number over 1,000 bison and 13,000 elk. The herds migrate across several jurisdiction boundaries, including Grant Teton National Park and southern Yellowstone National Park, Bridger-Teton National Forest, BLM resource areas, and State and private lands, before they winter primarily on the National Elk Refuge. Due to the wide range of authorities and interest, including management of resident wildlife by the State of Wyoming on many federal lands, we have used a cooperative approach to management planning involving all of the associated federal agencies and the WGFD.

The effects of six alternatives for the management of bison and elk populations for the National Elk Refuge and Grand Teton National Park are disclosed in the final Plan/EIS and are described in the ROD. Significant issues considered in the ROD include: Bison and elk populations and their ecology; restoration of habitat and management of other species of wildlife; supplemental winter feeding operations of bison and elk; disease prevalence and transmission; recreational opportunities; cultural opportunities and western traditions and lifestyles; commercial operations; and the local and regional economy.

The ROD provides the basis for our decision on the proposed Bison and Elk Management Plan. We adopted and plan to implement Alternative 4—Adaptively Manage Habitat and Populations, as described in the Final Plan/EIS, because it balances the major issues and stakeholder perspectives identified during the planning process with the purposes, missions, and management

policies of the U.S. Fish and Wildlife Service and the National Park Service.

Under the proposed plan, assuming the WGFD's herd objective of 11,000 has been met, and that higher numbers of elk would use the winter range, about 5,000 elk and 500 bison will winter on the National Elk Refuge at the end of the first phase of implementation. The elk hunt on the National Elk Refuge, and elk herd reductions as needed in Grand Teton National Park, will continue. A public bison hunt will be instituted on the National Elk Refuge and managed in accordance with the State of Wyoming licensing requirements and an approved refuge hunting plan. As herd sizes and objectives are achieved, further reductions in feeding or elk numbers will occur based on established criteria developed in collaboration with WGFD. The proposed plan includes an adaptive management framework that incorporates population management, habitat restoration, public education, and monitoring into an adaptive, progressive, and collaborative approach to address habitat conservation and wildlife population management.

Public comments were requested, considered, and incorporated throughout the planning process in numerous ways. Public outreach has included public open houses, public hearings, individual outreach activities, planning update mailings, and **Federal Register** notices. Three previous notices were published in the **Federal Register** concerning this Plan/EIS (66 FR 37489–37490, July 18, 2001; 70 FR 42089–42090, July 21, 2005; and 72 FR 5078–5080, February 2, 2007).

Dated: May 14, 2007.

**James J. Slack,**

*Deputy Regional Director, Region 6, Denver, Colorado.*

[FR Doc. 07–2773 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–020–07–1310–DT]**

### Notice of Intent To Prepare Supplemental Air Quality Analysis Information for the Draft Supplement to the Montana Statewide Final Oil and Gas Environmental Impact Statement (Draft SEIS) and Amendment of the Powder River and Billings Resource Management Plans (RMP), Miles City, MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Miles City Field Office, Montana, announces its intent to prepare supplemental air quality analysis information. On February 2, 2007, the BLM published a Notice of Availability in the **Federal Register** announcing the release of the Draft SEIS for public review and comment. The 90-day comment period closed May 2, 2007. The BLM was notified by the Environmental Protection Agency (EPA) of air quality analysis deficiencies in the Draft SEIS. As a result, the BLM is preparing an additional air quality analysis. When the additional air quality analysis has been completed, the BLM will only accept comments from the public on the new information presented.

**DATES:** The BLM anticipates making the additional air quality analysis information available to the public for a 90-day comment period around September 2007. The BLM will publish a Notice of Availability in the **Federal Register** when the supplemental air quality analysis is ready for release for public comment. Additional announcements will be made through local media by news releases and posted information on the Draft SEIS Web site: *http://www.blm.gov/eis/mt/milescity_seis/*.

**FOR FURTHER INFORMATION CONTACT:** Mary Bloom, Project Manager, Miles City Field Office, P.O. Box 219, Miles City, Montana 59301, or by telephone at (406) 233–2852.

**SUPPLEMENTARY INFORMATION:** Public comments submitted on the supplemental air quality analysis on the Draft SEIS, including names, e-mail addresses, and street addresses of the respondents, will be available for public review and disclosure at the above address during regular office business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sandra C. Berain,**

*Acting State Director.*

[FR Doc. E7–10891 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZ–420–1430–ES; AZA 32985]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classifications; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) has examined and found suitable for classification approximately 16 acres of public land in Pima County, Arizona, for lease or conveyance to the Drexel Heights Fire District under the provisions of the Recreation and Public Purposes Act, as amended, and in keeping with section 7 of the Taylor Grazing Act, as amended. The Fire District proposes to use the land for the expansion of an existing fire station facility, operated by the Drexel Heights Fire District.

**DATES:** Submit comments on or before July 23, 2007.

**ADDRESSES:** Detailed information concerning this action, including but not limited to, a development plan and documentation relating to compliance with applicable environmental and cultural resources laws, is available for review at the Bureau of Land Management, Tucson Field Office, 12661 East Broadway Boulevard, Tucson, Arizona 85748–7208.

**FOR FURTHER INFORMATION CONTACT:** Susan Bernal, Realty Specialist, at (520) 258–7206; e-mail address *susan_bernal@blm.gov*.

**SUPPLEMENTARY INFORMATION:** The following described public land in Pima County, Arizona, has been examined and found suitable for lease or conveyance for use as an expanded fire station facility under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, 43 U.S.C. 869 et seq., and is hereby classified accordingly pursuant to section 7 of the Taylor Grazing Act, as amended, 43 U.S.C. 315f:

**Gila and Salt River Meridian, Arizona**

T. 15 S., R. 12 E., sec. 3, lots 1 and 2 (within).

The area described contains 16 acres in Pima County.

When eligible for conveyance, BLM will resurvey the lots and relot them.

The Drexel Heights Fire District is a political subdivision of the State of Arizona that has the authority per Arizona Revised Statute Title 48 to acquire federal land (See 43 Code of Federal Regulations (CFR) 2741.2) and that operates an existing fire station serving the Drexel Heights Fire District. The Fire District proposes to expand the existing fire station by using all of the above-described land for a fire fighter training facility, including a new classroom, a driver training course and a parking area to be operated by the Fire District. The Fire District, as an agent of the State of Arizona, has advised BLM that it has the authority, as a duly authorized fire district, to operate the fire fighter training facility, both as to training instruction and, also, the functions of the physical site. Devoting the subject acreage to these uses would be of great benefit to the Tucson community.

As to the foregoing, the statement required by 43 CFR 2741.4(b) to accompany a Recreation and Public Purposes Act application has been filed in the BLM Tucson Field Office. The land is not needed for any Federal purpose. The lease or conveyance of the lands for recreational or public purposes use is consistent with the Phoenix District Resource Management Plan, dated September 1989, would be in the public interest and, as allowed, would involve no more acreage than is reasonably necessary for the new uses proposed by the Fire District.

Detailed information concerning the foregoing is available for review at the BLM, Tucson Field Office, at the address stated above, during normal business hours Monday through Friday (except Federal holidays). A public meeting may be held if the authorized officer determines that public interest in the proposal warrants holding such a meeting.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

The lease or conveyance of the lands, when issued, would be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391 (43 U.S.C. 945).

2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals, under applicable laws and regulations established by the Secretary of the Interior, including all necessary access and exit rights.

4. All valid existing rights.

5. A right-of-way authorized under Sec. 17 of the Act of November 9, 1921 (42 Stat. 216) for road purposes to the Arizona State Highway Department (*AZA 6032*) affecting public lands within sec. 3, T. 15 S., R. 12 E.

6. A right-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) for sewer line purposes to the Pima County Board of Supervisors (*AZA 10867*) affecting public lands within sec. 3, T. 15 S., R. 12 E.

7. Rights-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1760) for road purposes to Pima County Transportation and Flood Control (*AZA 17485 and AZA 22310*) affecting public lands within sec. 3, T. 15 S., R. 12 E.

8. A right-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1760) for Central Arizona Project purposes to the Bureau of Reclamation, Arizona Project Office (*AZA 22075*) affecting public lands within sec. 3, T., 15 S., R. 12 E.

9. Rights-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1760) for transmission line purposes to the Tucson Electric Power Company (*AZA 3048301 and AZA 30088*) affecting public lands within sec. 3, T. 15 S., R. 12 E.

10. A right-of-way authorized under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) for a potable water pipeline for municipal water supply purposes to the Tucson Water Department, (*AZA 30969*) affecting public lands within sec. 3, T. 15 S., R. 12 E.

11. A mineral material contract authorized under the Act of July 31, 1947 (61 Stat. 681; 30 U.S.C. 601,602) for mineral extraction to Clay Mine Adobe, (AZA 33755) affecting public lands within sec. 3, T. 15 S., R. 12 E. The mineral material permittee will reclaim the area of his operation including removal of all unpermitted surface and subsurface structures upon the termination of the mineral material contract. Said contract expires October 16, 2009.

12. CERCLA Term: ''Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. 9620(h)) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670) notice is hereby given that the above-described lands have been examined and no evidence was found to indicate that any hazardous substances had been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.''

13. Indemnification Term: ''All lessees or Purchasers/patentees, by accepting a lease patent, covenant and agree to indemnify, defend, and hold the United States harmless of any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the lessees patentees or their employees, agents, contractors, lessees, or any third-party, arising out of or in connection with the lessee's patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the lessee's patentees and their employees, agents, contractors, or lessees, or any third party , arising out of or in connection with the use and/or occupancy of the leased patented real property which has already resulted or does hereafter result in: (1) Violations of Federal, state and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s), and/or hazardous substance(s) , as defined by Federal or state environmental laws, off, on, into or under land, property and other interests of the United States; (5) Activities by which solid waste or hazardous substance(s) or waste, as defined by Federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the leased patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances(s) or waste(s); or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the parcels of land patented or otherwise conveyed by the United States, and may be enforced by

the United States in a court of competent jurisdiction.

*Classification Comments:* Interested persons may submit comments involving the suitability of the land for a fire fighter training facility, including a new classroom, a driver training course and a parking area. Comments on the classification are restricted to whether the land is physically suited for the proposals, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

*Application Comments:* Interested persons may submit comments regarding the specific use applied for as well as the proposed plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the lands for a fire fighter training facility, including a new classroom, a driver training course and a parking area. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on August 6, 2007. The lands will not be offered for lease or conveyance until after the classification becomes effective.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 2741.5(h)).

**Patrick Madigan,**

*Field Office Manager.*

[FR Doc. E7–10890 Filed 6–5–07; 8:45 am]

**BILLING CODE 4310–32–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–1105–1106 (Final)]**

## Lemon Juice From Argentina and Mexico

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of final phase antidumping investigations.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1105–1106 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Argentina and Mexico of lemon juice, provided for in subheadings 2009.31.40, 2009.31.60, and 2009.39.60 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**DATES:** *Effective Date:* April 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of lemon juice from Argentina and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 21, 2006, by Sunkist Growers, Inc., Sherman Oaks, CA.

*Participation in the investigations and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on August 28, 2007, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 11, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 31, 2007. A nonparty who has testimony

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as:

''* * * includes certain lemon juice for further manufacture, with or without addition of preservatives, sugar, or other sweeteners, regardless of the GPL (grams per liter of citric acid) level of concentration, brix level, brix/acid ratio, pulp content, clarity, grade, horticulture method (e.g., organic or not), processed form (e.g., frozen or not-from-concentrate), FDA standard of identity, the size of the container in which packed, or the method of packing.

Excluded from the scope are: (1) Lemon juice at any level of concentration packed in retail-sized containers ready for sale to consumers, typically at a level of concentration of 48 GPL; and (2) beverage products such as lemonade that typically contain 20 percent or less lemon juice as an ingredient.''

that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 6, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 4, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is September 18, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 18, 2007. On October 5, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 9, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 31, 2007.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E7–10846 Filed 6–5–07; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Annual Determination of Average Cost of Incarceration

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice.

**SUMMARY:** The fee to cover the average cost of incarceration for Federal inmates in Fiscal Year 2006 was $24,440.

**DATES:** *Effective Date:* June 6, 2007.

**ADDRESSES:** Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

**FOR FURTHER INFORMATION CONTACT:** Sarah Qureshi, (202) 307–2105.

**SUPPLEMENTARY INFORMATION:** 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2006 data, the fee to cover the average cost of incarcerating a single inmate for one year during 2006 was $24,440.

**Harley G. Lappin,**

*Director, Bureau of Prisons.*

[FR Doc. E7–10922 Filed 6–5–07; 8:45 am]

**BILLING CODE 4410–05–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

May 31, 2007.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *Mills.Ira@dol.gov,* or by accessing *http://www.reginfo.gov/public/do/PRAMain*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for U.S. Department of Labor/Bureau of Labor Statistic (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Bureau of Labor Statistics.
*Type of Review:* Reinstatement with change of a previously approved collection.
*Title:* Veterans Supplement to the CPS.
*OMB Number:* 1220–0102.
*Frequency:* Biennially.
*Affected Public:* Individuals or household.
*Type of Response:* Reporting.
*Number of Respondents:* 12,000.
*Number of Annual Responses:* 12,000.
*Estimated Time per Response:* 2 minutes.
*Total Burden Hours:* 400.
*Total Annualized Capital/Startup Costs:* 0.
*Total Annual Costs:* 0 (operating/maintaining systems or purchasing services).
*Description:* The purpose of this request for review is for the Bureau of Labor Statistics (BLS) to obtain clearance for the Veterans Supplement to the Current Population Survey (CPS), scheduled to be conducted in August 2007. The proposed supplement questions concerning veterans are shown in Attachment A. As part of the CPS, the supplement will survey individuals ages 17 and over from a nationally representative sample of approximately 60,000 U.S. households. The Veterans supplement is co-sponsored by the U.S. Department of Veterans Affairs (VA) and the U.S. Department of Labor's Veterans Employment and Training Service (VETS).

The August 2007 Veterans supplement will provide information on the labor force status of veterans with service-connected disabilities, combat veterans, National Guard and Reserve veterans, and recently discharged veterans. The supplement will also provide data on veterans' participation in various employment and training programs.

These data also will be used by the Veterans Employment and Training Service (VETS) and the Department of Veterans Affairs (VA) to determine policies that better meet the needs of our Nation's veteran population. Of current concern is the scope of the problems of veterans as well as the effectiveness of veterans' benefit programs in meeting their needs. The CPS demographic and labor force data provide a comprehensive picture that is invaluable in planning Federal programs and formulating policy. Legislation is regularly proposed in Congress concerning veterans; these proposals often use BLS data. Veterans service organizations, as well as academic researchers, use the data to analyze the employment status of various groups of veterans. We expect that approximately 12,000 veterans will participate in the survey.

**Ira L. Mills,**
*Departmental Clearance Officer/Team Leader.*
[FR Doc. E7–10789 Filed 6–5–07; 8:45 am]
**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–61,251, TA–W–61,251A, TA–W–61,251B, and TA–W–61,251C]**

### Mount Vernon Mills, Inc., Johnston, SC, Including Employees of Mount Vernon Mills, Inc., Johnston, SC Located at the Following Locations: Cincinnati, OH, Roslyn Heights, NY, and Fairview, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 8, 2007, applicable to workers of Mount Vernon Mills, Inc., Johnston, South Carolina. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees of the Johnston, South Carolina facility of Mount Vernon Mills, Inc. working out of Cincinnati, Ohio, Roslyn Heights, New York and Fairview, North Carolina. These employees provided design and sales function services for the production of baby bedding products produced by the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Johnston, South Carolina facility of Mount Vernon Mills, Inc. working out of Cincinnati, Ohio, Roslyn Heights, New York and Fairview, North Carolina.

The intent of the Department's certification is to include all workers of Mount Vernon Mills, Inc., Johnston, South Carolina who were adversely affected by increased company imports.

The amended notice applicable to TA–W–61,251 is hereby issued as follows:

All workers of Mount Vernon Mills, Inc., Johnston, South Carolina (TA–W–61,251), including employees of Mount Vernon Mills, Inc., Johnston, South Carolina located in Cincinnati, Ohio (TA–W–61,251A), Roslyn Heights, New York (TA–W–61,251B), and Fairview, North Carolina (TA–W–61,251C), who became totally or partially separated from employment on or after January 22, 2007, through May 8, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of May 2007.

**Richard Church,**
*Certifying Officer, Division of Trade Adjustment Assistance.*
[FR Doc. E7–10852 Filed 6–5–07; 8:45 am]
**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of May 14 through May 18, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of

separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

*None.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

*TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA: May 14, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

*None.*

**Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–61,125; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006.*

*TA–W–61,125A; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006.*

*TA–W–61,125B; Jones Apparel Group, Sample and Pattern Makers, New York, NY: April 3, 2006.*

*TA–W–61,161; Indalex, Inc., On-Site Leased Workers of Volt, Watsonville, CA: March 20, 2006.*

*TA–W–61,221; Hickory Hardware/ Belwith International, a Subsidiary of FKI, PLC, Grandville, MI: April 1, 2006.*

*TA–W–61,285; Metrologic Instruments, Corporate Division, Blackwood, NJ: April 10, 2006.*

*TA–W–61,386; Berkline, LLC, Livingston, TN: April 25, 2006.*

*TA–W–61,410; CGI Circuits, Inc., Taunton, MA: April 20, 2006.*

*TA–W–61,419; Firestone Tube Company, Russellville, AR: April 30, 2006.*

*TA–W–61,452; Commonwealth Home Fashions, Willsboro, NY: May 4, 2006.*

*TA–W–60,891; Cheetah Chassis Corporation, Berwick, PA: January 29, 2006.*

*TA–W–61,226; Delphi Corporation, Auto Holdings Group, Instrument Cluster Plant, Mays Chemicals, Flint, MI: March 30, 2006.*

*TA–W–61,277; Tonawanda Valve, Inc., North Tonawanda, NY: April 5, 2006.*

*TA–W–61,290; Flexible Technologies, Flexible Solutions Division, including On-Site Leased Workers of Employment Solutions, Abbeville, SC: April 10, 2006.*

*TA–W–61,341; Carrier Access Corp., Roanoke, VA: April 19, 2006.*

*TA–W–61,346; Northland Tool Corp., Traverse City, MI: April 17, 2006.*

*TA–W–61,371; Grand Marais Investors, Inc., dba K.B. Cook Incorporated, Traverse City, MI: April 9, 2006.*

*TA–W–61,412; Carlisle Finishing, LLC, Finishing Division, Carlisle, SC: April 27, 2006.*

*TA–W–61,208; GKN Sinter Metals, Inc., Worcester, MA: March 27, 2006.*

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–61,219; Collins and Aikman, Automotive Technical Center, Dover, NH: March 28, 2006.*

*TA–W–61,280; Dutailier Virginia, Inc., Martinsville, VA: March 28, 2006.*

*TA–W–61,318; Epic Technologies, Inc., On-Site Leased Workers of Superior Technical Resources, Johnson City, TN: April 16, 2006.*

*TA–W–61,318A; Epic Technologies, Inc., Leased Workers of Superior Tech. Resources, Norwalk, OH: April 16, 2006.*

*TA–W–61,364; CyOptics, Inc., Formerly Apogee Photonics, On-Site Leased Workers of Express Personnel Service, Breingsville, PA: April 23, 2006.*

*TA–W–61,421; Filtrona Richmond, Inc., a subsidiary of Filtrona, PLC, Richmond, VA: April 20, 2006.*

*TA–W–61,435; Sanmina-SCI Corporation, dba Hadco Corporation, Printed Circuit Board Division, Phoenix, AZ: May 1, 2006.*

*TA–W–61,443; Seagate Technology, LLC, Shakopee Division, Shakopee, MN: May 3, 2006.*

*TA–W–61,448; VCST Powertrain Components, Inc., a subsidiary of VCST Inc., Leased Workers of Aerotek & Entech, Chesterfield, MI: May 2, 2006.*

*TA–W–61,475; Plastiflex, Santa Ana, CA: May 8, 2006.*

*TA–W–61,243; Ferro Electronic Material Systems, Niagara Falls, NY: April 3, 2006.*

*TA–W–61,292; Millipore Corporation, Bioscience Division, On-Site Leased Workers From Veritude, Danvers, MA: April 10, 2006.*

*TA–W–61,394; Aavid Thermalloy LLC, Leased Workers of All Staff, Central NH Employment, Laconia, NH: April 24, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*TA–W–61,246; Bush Industries, Inc., Little Valley Facility, Little Valley, NY: April 2, 2006.*

*TA–W–61,253; Keystone Powered Metal Co., Columbus, OH: April 3, 2006.*

*TA–W–61,469; Southern Tool Manufacturing Co., Inc., Winston-Salem, NC: May 7, 2006.*

*TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA: May 14, 2006.*

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

*None.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

*TA–W–61,510; Wehadkee Yarn Mills, Headquarters Office, West Point, GA.*

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*None.*

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

*None.*

**Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance**

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

*TA–W–61,385; The Nielsen Company, Formerly Known as A.C. Nielsen Co., Fond du Lac, WI.*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*None.*

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

*TA–W–60,908; Georgia Pacific, Consumer Products Division, Muskogee, OK.*

*TA–W–60,958; Sekely Industries, Inc., On-Site Leased Workers of Staffright, Bartech, Alliance Staffing, Salem, OH.*

*TA–W–61,086; Delta Consolidated, Inc., Danaher Tool Group Division, Raleigh, NC.*

*TA–W–61,101; Ameridrives International, Inc., Erie, PA.*

*TA–W–61,150; Boise Cascade, LLC, Paper Division, Salem, OR.*

*TA–W–61,164; Intel Corporation, Fab 7 Test Factory, Rio Rancho, NM.*

*TA–W–61,172; Keystone Weaving Mills, Inc., York, PA.*

*TA–W–61,223; Waterbury Buckle Co., A Division of Illinois Tool Works, Inc., Waterbury, CT.*

*TA–W–61,284; Continental Structural Plastics, Petoskey, MI.*

*TA–W–61,290A; Flexible Technologies, Heat Solutions Division, Abbeville, SC.*

*TA–W–61,338; Willow Hill Industries, LLC, Willoughby, OH.*

*TA–W–61,322; Oregon Cutting Systems Group, a wholly-owned subsidiary of Blount, Inc., Warehouse, Clackamas, OR.*

*TA–W–61,355; Texas Instruments, Inc., Silicon Technology Development, Dallas, TX.*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–61,268; Hewlett Packard Company, Technology Solutions Group, Global Mission Critical Solution, Austin, TX.*

*TA–W–61,342; APL Information Services, LTD, a subdivision of APL Limited, Oakland, CA.*

*TA–W–61,352; SSA Cooper, Georgetown, SC.*

*TA–W–61,445; United Airlines, Inc., Sales Support Operation Center, Elk Grove Village, IL.*

*TA–W–61,482; Avon Products, Inc., Avon National Contact Center, Springdale, OH.*

*TA–W–61,502; Digitron Packaging, Inc., Redford, MI.*

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

*None.*

I hereby certify that the aforementioned determinations were issued during the period of May 14 through May 18, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: May 30, 2007.

**Richard Church,**

*Acting Director, Division of Trade Adjustment Assistance.*

[FR Doc. E7–10851 Filed 6–5–07; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''Current Population Survey (CPS) Displaced Worker, Job Tenure, and Occupational Mobility Supplement'' to be conducted in January 2008. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before August 6, 2007.

**ADDRESSES:** Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, 202–691–7628. (This is not a toll free number.)

**FOR FURTHER INFORMATION CONTACT:** Amy A. Hobby, BLS Clearance Officer, 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The CPS Displaced Worker, Job Tenure, and Occupational Mobility supplement is conducted biennially and was last collected in January 2006.

This supplement will gather information on workers who have lost or left their jobs because their plant or company closed or moved, there was insufficient work for them to do, or their position or shift was abolished. Data will be collected on the extent to which displaced workers received advance notice of job cutbacks or the closing of their plant or business. For those workers who have been reemployed, the supplement will gather data on the types of jobs they found and will compare current earnings with those from the lost job.

The incidence and nature of occupational changes in the preceding year will be queried. The survey also probes for the length of time workers (including those who have not been displaced) have been with their current employer. Additional data to be collected include information on the receipt of unemployment compensation, the loss of health insurance coverage, and the length of time spent without a job.

Because this supplement is part of the CPS, the same detailed demographic information collected in the CPS will be available on respondents to the supplement. Comparisons will be possible across characteristics such as sex, race, age, and educational attainment of the respondent.

The information collected by this survey will be used to determine the size and nature of the population affected by job displacements and the needs and scope of programs serving adult displaced workers. It also will be used to assess employment stability by determining the length of time workers have been with their current employer and estimating the incidence of occupational change over the course of a year. Combining the questions on displacement, job tenure, and occupational mobility will enable analysts to obtain a more complete picture of employment stability.

#### II. Current Action

Office of Management and Budget clearance is being sought for the CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement to the CPS.

#### III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Agency:* Bureau of Labor Statistics.

*Title:* CPS Displaced Worker, Job Tenure, and Occupational Mobility Supplement.

*OMB Number:* 1220–0104.

*Affected Public:* Households.

*Total Respondents:* 55,000.

*Frequency:* One time.

*Total Responses:* 55,000.

*Average Time per Response:* 8 minutes.

*Estimated Total Burden Hours:* 7,333 hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 1st day of June, 2007.

**Cathy Kazanowski,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. E7–10893 Filed 6–5–07; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice informs interested persons of the fourth meeting of the Technical Study Panel (Panel) on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining. The public is invited to attend.

**DATES:** The meeting will be held on June 20–21, 2007. The meetings on June 20

and 21 will start at 9 a.m. each day and conclude by 5 p.m.

**ADDRESSES:** The meeting location is the Best Western Birmingham Airport Hotel, 5216 Messer Airport Highway, Birmingham, AL 35212. (*Telephone:* 205–591–7900).

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209; *silvey.patricia@dol.gov* (Internet e-mail), 202–693–9440 (voice), or 202–693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:** The Panel was created under section 11 of the Mine Improvement and New Emergency Response (MINER) Act of 2006 (Pub. L. 109–236). The purpose of the Panel is to provide independent scientific and engineering review and recommendations concerning the utilization of belt air and the composition and fire retardant properties of belt materials in underground coal mining. By December 2007, the Panel must submit a report to the Secretaries of Labor and Health and Human Services, the Senate Committee on Health, Education, Labor and Pensions, and the House Committee on Education and the Workforce. The first meeting of the Panel was held in Washington, DC on January 9–10, 2007. The second meeting of the Panel was held in Coraopolis, PA on March 28–30, 2007. The third meeting of the Panel was held in Salt Lake City, UT on May 16–17, 2007.

The agenda for the fourth meeting will include:

(1) Panel of Atmospheric Monitoring System (AMS) manufacturers;

(2) Discussion of sensor technologies and current AMS capabilities;

(3) General discussion of belt air issues with representatives of industry and labor; and

(4) Public input.

The panel will allocate time at the end of each day for presentations by members of the public. MSHA expects the amount of time allocated for public participation to be approximately one hour, but it may vary based on the interest expressed by the public. MSHA will also accept written submissions.

MSHA requests that persons planning to participate in the public input session of this meeting notify the Agency at least one week prior to the meeting date. There will be an opportunity for other persons, who have not made prior arrangements with MSHA and wish to speak, to register at the beginning of the meeting each day. Speakers should limit their presentations to five minutes, but may supplement oral remarks with written submissions. MSHA will incorporate written submissions into the official record, which includes a verbatim transcript, and make them available to the public. The Panel Chairman will moderate the public participation session, and panelists may ask the speakers questions.

The public may inspect the official record of the meetings at the MSHA address listed above under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, this information will be posted on the Agency's single source Web page titled ''The Technical Study Panel on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Materials in Underground Coal Mining Single Source Page.'' The Single Source page is located at *http://www.msha.gov/BeltAir/BeltAir.asp.*

Dated: June 1, 2007.

**Richard E. Stickler,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 07–2811 Filed 6–1–07; 2:46 pm]

**BILLING CODE 4510–43–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Privacy Act of 1974, as Amended; System of Records Notices

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice to revise an existing system of records.

**SUMMARY:** The National Archives and Records Administration (NARA) is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. NARA also proposes to revise its routine uses (found in Appendix A) to incorporate routine use language recommended by the President's Task Force on Identity Theft. In this notice, NARA publishes a revision to NARA 23, Office of Inspector General Investigative Case Files, for comment.

**DATES:** *Effective Dates:* The establishment of the revised system NARA 23 and the revised Appendix A will become effective without further notice on July 6, 2007, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of comments received, a new final notice will be published.

**ADDRESSES:** NARA invites interested persons to submit comments on this system notice. Comments may be submitted by any of the following methods:

- *Mail:* Send comments to: Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.
- *Fax:* Submit comments by facsimile transmission to: 301–837–0293.
- *E-Mail:* Send comments to *ramona.oliver@nara.gov.*

**FOR FURTHER INFORMATION CONTACT:** Ramona Branch Oliver, Privacy Act Officer, 301–837–2024 (voice) or 301–837–0293 (fax).

**SUPPLEMENTARY INFORMATION:** The NARA system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**. They are available on the Internet at *http://www.archives.gov/foia/privacy-program/inventory.html* or from the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.

The notice for NARA 23 is being revised in the following areas:

- *Name of System:* The name of the system has changed from Investigative Case Files to Office of Inspector General Investigative Case Files.
- *Security Classification:* The reference to the prevailing Executive Order on national security classification is updated to read EO 12958, as amended.
- *Authority for Maintenance of the System:* References to 44 U.S.C. 2104(h) and Executive Orders 10450, 11246, and 11478 are removed.
- *Routine Uses of Records Maintained in the System:* The routine use statements specific to NARA 23 have been completely revised.

Appendix A is amended by adding new routine use H—Data Breach incorporating the suggested language from the President's Identity Task Force.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA

intends to follow these principles in transferring information to another agency or individual as a ''routine use'', including assurance that the information is relevant for the purposes for which it is transferred.

The NARA 23 system notice and the inventory of routine uses, as amended, are published at the end of this notice.

Dated: May 29, 2007.

**Allen Weinstein,**

*Archivist of the United States.*

1. NARA 23 is revised to read as follows:

**NARA 23**

**SYSTEM NAME:**

Office of Inspector General Investigative Case Files.

**SECURITY CLASSIFICATION:**

Some of the material contained in this system of records has been classified in the interests of national security pursuant to Executive Orders 12958, as amended, and 13142.

**SYSTEM LOCATION:**

Investigative case files are located at the Office of Inspector General at the National Archives and Records Administration, College Park, Maryland.

**CATEGORIES OF INDIVIDUALS IN THE SYSTEM:**

Individuals covered by this system of records may include: persons who have been the source of a complaint or an allegation that a crime has occurred, witnesses having information or evidence concerning an investigation, and suspects in criminal, administrative, or civil actions. Current and former NARA employees, NARA contract employees, members of NARA's Federal advisory committees, and members of the public are covered under this system of records when they become subjects of or witnesses to authorized investigations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Investigative case files may include: Statements of alleged administrative, ethical, or criminal wrongdoing; reports; related correspondence; exhibits; copies of forms and decisions; summaries of hearings and meetings; notes; attachments; and other working papers. These records may contain some or all of the following information about an individual: name; address; correspondence symbol; telephone number; birth date; birthplace; citizenship; educational background; employment history; medical history; identifying numbers such as social security and driver's license numbers; and insurance information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. App. 3.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

NARA maintains investigative case files on individuals to: examine allegations and/or complaints of fraud, waste, abuse, and irregularities and violations of laws and regulations; make determinations resulting from these authorized investigations; and facilitate the preparation of statistical and other reports by the Office of Inspector General. The routine use statements A, B, C, D, G, and H, described in Appendix A following the NARA Notices, apply to this system of records.

In addition to the routine uses described in Appendix A, information in the system may be disclosed as follows:

1. To qualified individuals or organizations (including, but not limited to, members of the President's Council on Integrity and Efficiency, the Executive Council on Integrity and Efficiency, and authorized officials of the Department of Justice and the Federal Bureau of Investigation) in connection with the performance of peer reviews, qualitative assessment reviews, or other studies of internal safeguards and management procedures employed in the operation of the Office of Inspector General.

2. To a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding.

3. To the Department of Justice for the purpose of litigating an action or seeking legal advice, or for the purpose of obtaining its advice on Freedom of Information Act matters.

4. To third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

5. To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

6. To an individual or individuals who are in danger in situations involving an imminent danger of death or physical injury.

7. To independent auditors or other private firms or individuals with which the Office of Inspector General has contracted to carry out an independent audit, or to provide support for audits, reviews, investigations or other inquiries. These contractors will be required to maintain Privacy Act safeguards with respect to such records.

8. To inform complainants, victims, and witnesses of the results of an investigation or inquiry.

9. To a Federal agency responsible for considering debarment or suspension action if the record would be relevant to such action.

10. To the Office of Management and Budget for the purpose of obtaining its advice on Privacy Act matters.

11. To the Office of Government Ethics to comply with agency reporting requirements established by the Office of Government Ethics in 5 CFR part 2638, subpart F.

12. To the White House, Office of Management and Budget, and other organizations in the Executive Office of the President regarding matters inquired of.

13. To a contractor, subcontractor, or grantee firm or institution, to the extent that the disclosure is in NARA's interest and is relevant and necessary in order that the contractor, subcontractor, or grantee is able to take administrative or corrective action.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records and electronic media.

**RETRIEVABILITY:**

Information in investigative case files may be retrieved by case number, an individual's name, or social security number.

**SAFEGUARDS:**

During business hours, records are maintained in areas accessible only to authorized NARA personnel. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

**RETENTION AND DISPOSAL:**

Nearly all investigative case files are temporary records and are destroyed in accordance with the disposition instructions in the NARA records schedule contained in FILES 203, the NARA Files Maintenance and Records Disposition Manual. However, the retention and disposal of significant investigative case files, such as those that result in national media attention, congressional investigation, and/or substantive changes in agency policy or procedure, are determined on a case-by-case basis. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

**SYSTEM MANAGER(S) AND ADDRESS:**

The system manager is the Inspector General, Office of Inspector General. The address is listed in Appendix B following the NARA Notices.

**NOTIFICATION PROCEDURE:**

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

**CONTESTING RECORD PROCEDURES:**

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

**RECORD SOURCE CATEGORIES:**

Information in investigative case files may be obtained from current and former NARA employees, NARA contract employees, members of NARA's Federal advisory committees, researchers, law enforcement agencies, other Government agencies, informants, and educational institutions, and from individuals' employers, references, coworkers, and neighbors.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

In accordance with 5 U.S.C. 552a(j)(2), this system of records, to the extent it pertains to the enforcement of criminal laws, is exempted from all provisions of the Privacy Act of 1974, 5 U.S.C. 552a, except subsections (b), (c)(1) and (c)(2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i). This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

In accordance with 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), this system of records is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G) and (H); and (f) of the Privacy Act of 1974 if the system of records is: (1) Subject to the provisions of section 552(b)(1) of this title; (2) investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be entitled by Federal law or otherwise eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence; and (3) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified material, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the source would be held in confidence.

2. Appendix A is amended as follows:

## Appendix A: Routine Uses

* * * * *

The following routine use statements will apply to National Archives and Records Administration notices where indicated:

A. *Routine Use-Law Enforcement:* In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records, may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

B. *Routine Use-Disclosure When Requesting Information:* A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. *Routine Use-Disclosure of Requested Information:* A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, conducting a security or suitability investigation, classifying a job, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. *Routine Use-Grievance, Complaint, Appeal:* A record from this system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties. To the extent that official personnel records in the custody of NARA are covered within the system of records published by the Office of Personnel Management as Government wide records, those records will be considered as a part of that Government wide system. Other records covered by notices published by NARA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

E. *Routine Use-Congressional Inquiries:* A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

F. *Routine Use-NARA Agents:* A record from this system of records may be disclosed as a routine use to an expert, consultant, agent, or a contractor of NARA to the extent necessary for them to assist NARA in the performance of its duties. Agents include, but are not limited to, GSA or other entities supporting NARA's payroll, finance, and personnel responsibilities.

G. *Routine Use-Department of Justice/ Courts:* A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body before which NARA is authorized to appear, when: (a) NARA, or any component thereof; or, (b) any employee of NARA in his or her official capacity; or, (c) any employee of NARA in his or her individual capacity where the Department of Justice or NARA has agreed to represent the employee; or (d) the United States, where NARA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or by NARA before a court or adjudicative body is deemed by NARA to be relevant and necessary to the litigation, provided, however, that in each case, NARA determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

H. *Routine Use—Data breach:* A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised;

(2) NARA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harem to the security or integrity of this system or other systems or programs (whether maintained by NARA of another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with NARA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. E7–10849 Filed 6–5–07; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

### Notice of Proposed Information Collection: Assessing the Effectiveness of Various Methods Used To Distribute Funds to U.S. Museums

**AGENCY:** Institute of Museum and Library Services, National Foundation for the Arts and Humanities.

**SUMMARY:** The Institute of Museum and Library Services (IMLS) as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Institute of Museum and Library Services is soliciting comments on a proposed study to assess the effectiveness of various methods used to distribute funds to the nation's museums.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before August 6, 2007. IMLS is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**ADDRESSES:** Send comments to: Mamie Bittner, Deputy Director, Office of Policy, Planning, Research, and Communications, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC. Ms. Bittner can be reached by telephone: 202–653–4630; fax: 202–653–4600; or e-mail: *mbittner@imls.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Institute of Museum and Library Services is authorized by the Museum and Library Services Act, Public Law 108–81, and is the primary source of federal support for the nation's 122,000 libraries and 17,500 museums. The Institute's mission is to create strong libraries and museums that connect people to information and ideas. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development.

#### II. Current Actions

To better understand the role of public funding the study will be framed by four questions:

(1) What mechanisms are currently used to deliver public funding to museums from the Federal government and the state government in each of the states to be identified?

(2) For what purposes are state and Federal public funds allocated to museums in each of the states to be identified?

(3) How do delivery mechanisms impact the quality of services? Are there gaps?

(4) Would alternative funding models, such as a population-based state grant, make a significant impact in addressing any identified gaps in museum services?

Once completed, the results of the study will be incorporated into a report which will be made widely available to inform and benefit the museum community and the public at large.

*Agency:* Institute of Museum and Library Services.

*Title:* Assessing the Effectiveness of Various Methods Used to Distribute Funds to U.S. Museums.

*OMB Number:* N/A.

*Agency Number:* 3137.

*Frequency:* One time.

*Affected Public:* Museums, libraries, State Library Administrative Agencies, institutions of higher education, not-for-profit institutions, library and museum professional associations, Native American tribal governments, State and local governments, appointed and elected officials, school officials and educators, and individuals.

**FOR FURTHER INFORMATION CONTACT:** Mamie Bittner, Deputy Director, Office of Policy, Planning, Research, and Communications, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC. Ms. Bittner can be reached by telephone: 202–653–4630; fax: 202–653–4600; or e-mail: *mbittner@imls.gov.*

Dated: May 30, 2007.

**Barbara Smith,**

*E-Projects Officer.*

[FR Doc. E7–10829 Filed 6–5–07; 8:45 am]

**BILLING CODE 7036–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of the Availability of a Draft Environmental Assessment

**AGENCY:** National Science Foundation.

**ACTION:** Notice of availability of a draft Environmental Assessment for proposed activities in the Eastern Tropical Pacific Ocean.

**SUMMARY:** The National Science Foundation (NSF) gives notice of the availability of a draft Environmental Assessment (EA) for proposed activities in the Eastern Tropical Pacific Ocean.

The Division of Ocean Sciences in the Directorate for Geosciences (GEO/OCE) has prepared a draft Environmental Assessment for a pair of marine geophysical surveys by the Research Vessel *Marcus G Langseth* in the Eastern Tropical Pacific Ocean, in international waters (2000–5000 meters depth) between 5° S and 11° N, along ~105° W during September–December 2007. The draft Environmental Assessment is available for public review for a 30-day period.

**DATES:** Comments must be submitted on or before July 6, 2007.

**ADDRESSES:** Copies of the draft Environmental Assessment are available upon request from: Dr. William Lang, National Science Foundation, Division

of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–7857. The draft is also available on the agency's Web site at: *http://www.nsf.gov/geo/oce/pubs/MGL_ETP_2007_EA.pdf.*

**SUPPLEMENTARY INFORMATION:** Lamont-Doherty Earth Observatory (LDEO), with research funding from the NSF, plans to conduct two marine seismic surveys in the Eastern Tropical Pacific Ocean (ETP) during 2007. The research programs will take place in international waters of the ETP at least 890 km from any coast. The surveys will use a towed airgun array consisting of up to 27 operating airguns with a maximum discharge volume of 4950 $in^3$. The studies will take place in offshore waters >2000 m deep.

The first survey will start in September 2007 and will obtain seismic reflection images of the internal structure of the magmatic-hydrothermal system at the fast-spreading mid-ocean ridge of the East Pacific Rise (EPR). The seismic data from the EPR survey will be used to advance our understanding of the linkages between the fundamental process of crustal creation at the mid-ocean ridge and the biological systems that thrive in the absence of sunlight at deep sea volcanoes. The survey will allow the characterization of the fundamental heat source driving the seafloor hydrothermalism in the EPR, by examining the subsurface magma system. It will also provide an understanding of the relationships between the temporal variations in subsurface magma systems and highly transient phenomena observed at the seafloor like faulting, volcanism, and hydrothermal venting. Hydrothermal systems are of great interest in that they may be linked to the origin of life in early Earth history.

The second survey is expected to take place from early November through December 2007. It will examine two important types of seismic behavior of the Quebrada, Discovery, and Gofar fault systems (QDG) to understand better the behavior of earthquakes and faults in general. Oceanic transform faults, such as the QDG, are the most poorly studied of the various types of plate boundaries. The QDG survey will examine the seismogenic properties that make oceanic transforms unique, including abundant foreshocks before large earthquakes, slow ruptures, and large variations in fault seismic coupling. The two main questions to be addressed by the study are: (1) Do large and small earthquakes nucleate in the same way, or is there some kind of fault preparation process before large events, and (2) why do some faults remain locked for decades to centuries between large earthquakes while others creep aseismically and never have a large event? Refraction images of the material properties in both fault zones will provide important information about the physics of faulting and the earthquake process.

The first survey (EPR) is a multichannel seimic (MCS) reflection survey in a 3D configuration. The survey will consist of two racetrack configurations with a total of 36 loops that will cover an area of ~28 × 28 km. The *Langseth* will deploy a 36-airgun array as an energy source. However, two identical two-stirring sources will be firing alternately, so that no more than 18 airguns will be firing at any time. The maximum discharge volume will be 3300 $in^3$. The *Langseth* will also tow the receiving system, which consists of four 6-km hydrophone streamers; each streamer will be located 100 m from the adjacent streamer. The second study (QDG) will consist of a refraction survey done in a 2D configuration. It will consist of two north-south lines, each ~122 km in length, each to be surveyed twice. If there is time, two 25-km west-east lines will also be surveyed, and one of the north-south lines will be resurveyed. With the contingency surveys, the study will consist of a total of 654 km of survey lines, including turns. The *Langseth* will deploy a 36-airgun array as an energy source. However, no more than 27 airguns will be fired at any time. The maximum discharge volume will be 4950 $in^3$. A single 8-km streamer will be deployed. The *Langseth* will also deploy 40 long-term OBSs, deployed over a 50-km wide spread. The long-term OBSs will be recovered 1 year after deployment. Another 8–10 short-term OBSs will be deployed on each line, which will be retrieved after the seismic surveys are completed.

LDEO has applied for the issuance of an Incidental Harrassment Authorization (IHA) from the National Marine Fisheries Service (NMFS) to authorize the incidental harassment of small numbers of marine mammals during the seismic survey. the information in this Environmental Assessment supports the IHA permit application process, provides information on marine species not covered by the IHA, and addresses the requirements of Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions''. Alternatives addressed in this EA consist of a corresponding seismic survey at a different time, along with issuance of an associated IHA; and the no action alternative, with no IHA and no seismic survey.

Numerous species of cetaceans and sea turtles occur in the Eastern Tropical Pacific Ocean. Several of the cetacean species are listed as *endangered* under the U.S. Endangered Species Act (ESA), including the humpback, sei, fin, blue, and sperm whales. Sea turtles that are known to occur in the ETP include the *endangered* leatherback, green, olive ridley, and hawksbill turtle, and the *threatened* loggerhead turtle.

The potential impacts of the seismic surveys would be primarily a result of the operation of airguns, although a multi-beam sonar and a sub-bottom profiler will also be operated. Impacts may include increased marine noise and resultant avoidance behavior by marine mammals, sea turtles, and fish; and other forms of disturbance. The operations of the project vessel during the study would also cause a minor increase in the amount of vessel traffic. An integral part of the planned survey is a monitoring and mitigation program designed to minimize the impacts of the proposed activities on marine mammals and sea turtles that may be present during the proposed research, and to document the nature and extent of any effects. Injurious impacts to marine mammals and sea turtles have not been proven to occur near airgun arrays; however the planned monitoring and mitigation measures would minimize the possibility of such effects should they otherwise occur.

Protection measures designed to mitigate the potential environmental impacts will include the following: a minimum of one dedicated marine mammal observer maintaining a visual watch during all daytime airgun operations, and two observers for 30 minutes before start up. A passive acoustic monitoring (PAM) array will be monitored 24 hours per day while at the survey area during airgun operations and when the *Langseth* is underway while the airguns are not operating. The use of ramp-up, as well as implementation of power-down or shut-down procedures when animals approach a designated exclusion zone (EZ) are also important mitigation measures. LDEO and its contractors are committed to apply those measures in order to minimize disturbance of marine mammals and sea turtles, and also to minimize the risk of injuries or of other environmental impacts.

With the planned monitoring and mitigation measures, unavoidable impacts to each of the species of marine mammal that might be encountered are expected to be limited to short-term localized changes in behavior and

distribution near the seismic vessel. At most, such effects may be interpreted as falling within the Marine Mammal Protection Act (MMPA) definition of ''Level B Harassment'' for those species managed by NMFS. No long-term or significant effects are expected on individual marine mammals, or the populations to which they belong, or their habitats. The agency is currently consulting with the NMFS regarding species within their jurisdiction potentially affected by this proposed activity.

Copies of the draft EA, titled ''Environmental Assessment of two Marine Geophysical Surveys by the *Marcus G. Langseth* in the Eastern Tropical Pacific, 2007,'' are available upon request from: Dr. William Lang, National Science Foundation, Division of Ocean Sciences, 4201 Wilson Blvd., Suite 725, Arlington, VA 22230. Telephone: (703) 292–7857 or at the agency's Web site at: *http://www.nsf.gov/geo/oce/pubs/MGL ETP 2007 EA.pdf.* The NSF invites interested members of the public to provide written comments on this draft EA.

Dated: May 31, 2007.

**Dr. Alexander Shor,**

*Program Director, Oceanographic Instrumentation and Technical Services, Division of Ocean Sciences, National Science Foundation.*

[FR Doc. 07–2809 Filed 6–5–07; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste and Materials; Meeting Notice

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold its 180th meeting on June 19–21, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

**Tuesday, June 19, 2007**

*10 a.m.–10:05 a.m.: Opening Remarks by the ACNW&M Chairman* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

*10:05 a.m.–11:30 a.m.: U.S. Department of Energy Briefing on the Transportation, Aging, and Disposal (TAD) Canister and the Total System Model (TSM) in Support of the Yucca Mountain Repository Effort* (Open)—A representative from the Department of Energy (DOE), Office of Civilian Radioactive Waste Management, will brief the Committee on the status of the Transportation, Aging, and Disposal (TAD) canister that will be used to transport and dispose of spent nuclear fuel and other high-level radioactive waste to the proposed Yucca Mountain Repository. The speaker will also discuss DOE's Total System Model (TSM) in support of the transportation effort.

*11:30 a.m.–12 p.m.: Election of ACNW&M Officers for the period of July 1, 2007 to June 30, 2008* (Open)—The Committee will elect the Chairman and Vice Chairman for the ACNW&M for the next 1-year period.

*Working Group Meeting on Implementation of 10 CFR 20.1406 (Open)*

*1 p.m.–1:05 p.m.: Opening Remarks and Introductions* (Open)—ACNW&M Member Dr. James Clarke will provide an overview of the Working Group Meeting, including the meeting purpose and scope, and introduce invited speakers.

1:05 p.m.–4 p.m.: Scheduled Presentations

- Representatives from the designers of the Westinghouse AP1000 and the General Electric ESBWR power reactors will present information on the implementation of 10 CFR 20.1406, ''Minimization of Contamination,'' in the designs of these reactors.
- A representative from the NRC's Office of Nuclear Regulatory Research will brief the Committee on draft Regulatory Guide 4012.
- A representative of the Nuclear Energy Institute will present information on industry contributions to the draft Regulatory Guide and implementation of 10 CFR 20.1406.

There may be a 15 minute break at some point during this activity.

*4 p.m.–5 p.m.: Discussion and Wrap Up* (Open)—Committee Member Clarke will lead a discussion of the ACNW&M Members and the invited speakers. Dr. Clarke will provide a summary of the Working Group Meeting, including a discussion of a possible letter report to the Commission.

**Wednesday, June 20, 2007**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACNW&M Chairman* (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

*8:35 a.m.–9:30 a.m.: NRC Office of Public Affairs' Perspectives on Radiation Risk Communication* (Open)—NRC staff representative from the Office of Public Affairs (OPA) will brief the Committee on the NRC's efforts to inform the public about the health effects from low dose radiation exposure. The discussion is also expected to address the public perceptions about radiation exposures.

*9:30 a.m.–10 a.m.: A Basic Primer on High-Burnup Spent Nuclear Fuel and Its Cladding* (Open)—ACNW&M staff will provide the Committee with a lecture on spent nuclear fuels (SNFs), the effects from high-burnup exposure, and how storage and transportation of SNF can be affected by burnup-affected characteristics. Some of the topics to be covered are cladding types, hydriding, and oxidation.

*10:15 a.m.–11:45 a.m.: ACNW&M Staff Attendance to Recent Technical Meetings* (Open)—ACNW&M staff will report to the Committee on their attendance to recent technical meetings such as: the NEI Dry Cask Storage Forum, the National Mining Association (NMA)/NRC Uranium Recovery Workshop, the Devil's Hole Workshop, and the DOE/NRC Technical Exchange Meeting on Preclosure Facilities Layout and Operations.

*1 p.m.–4:30 p.m.: Discussion of ACNW&M Letter Reports* (Open)—The Committee will discuss potential and proposed ACNW&M letter reports.

*4:30 p.m.–5:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include content of future letters and scope of future Committee Meetings.

**Thursday, June 21, 2007**

*8:30 a.m.–5 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of ACNW&M activities and specific issues that were not completed during previous meetings. Discussions may include content of future letters and scope of future Committee Meetings.

Procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on October 12, 2006 (71 FR 60196). In accordance with those procedures, oral or written views may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Dr. Antonio F. Dias (Telephone 301–415–6805), between 8:15 a.m. and 5 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected

portions of the meeting as determined by the ACNW&M Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW&M office prior to the meeting. In view of the possibility that the schedule for ACNW&M meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Dr. Dias as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Dias.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html or http://www.nrc.gov/reading-rm/doc-collections/ (ACRS & ACNW Mtg schedules/agendas).*

Video teleconferencing service is available for observing open sessions of ACNW&M meetings. Those wishing to use this service for observing ACNW&M meetings should contact Mr. Theron Brown, ACRS/ACNW&M Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., (ET), at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: May 31, 2007.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E7–10858 Filed 6–5–07; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste and Materials Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold a Planning and Procedures meeting on June 19, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW&M, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, June 19, 2007—8:30 a.m.–9:30 a.m.**

The Committee will discuss proposed ACNW&M activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Antonio F. Dias (*Telephone*: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: May 30, 2007.

**Antonio F. Dias,**

*Branch Chief, ACNW&M.*

[FR Doc. E7–10861 Filed 6–5–07; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Rule 248.30; SEC File No. 270–549; OMB Control No. 3235–0610.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') plans to submit to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information for rule 248.30 under Regulation S-P (17 CFR 248.30), titled ''Procedures to Safeguard Customer Records and Information; Disposal of Consumer Report Information.''

Rule 248.30 (the ''safeguard rule'') requires brokers, dealers, investment companies, and investment advisers registered with the Commission (''registered investment advisers'') (collectively ''covered institutions'') to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. The safeguards must be reasonably designed to ''insure the security and confidentiality of customer records and information,'' ''protect against any anticipated threats or hazards to the security and integrity'' of those records, and protect against unauthorized access to or use of those records or information, which ''could result in substantial harm or inconvenience to any customer.'' The safeguard rule's requirement that covered institutions' policies and procedures be documented in writing constitutes a collection of information and must be maintained on an ongoing basis. This requirement eliminates uncertainty as to required employee actions to protect customer records and information and promotes more systematic and organized reviews of safeguard policies and procedures by institutions. The information collection also assists the Commission's examination staff in assessing the existence and adequacy of covered institutions' safeguard policies and procedures.

The Commission staff estimates that approximately 449 new entities are subject to the requirements of the safeguard rule's documentation requirement each year. Of these, we estimate that 389 will be small entities, and that on average a small entity will spend an average of 15 hours to develop and document its safeguard policies and procedures. The Commission staff therefore estimates a one-time hour burden for these new, smaller entities of 5,835 hours. We estimate that 60 additional large institutions will be subject to the rule, and that on average each new large institution will spend 715 hours to develop and document their safeguard policies and procedures, for a one-time burden of 42,900 hours. Thus, we estimate a one-time hour burden for new entities of 48,735 hours per year.

The Commission staff also estimates that 2,080 institutions review and

update their policies and procedures under the rule each year. We estimate that 815 of these institutions are smaller entities that spend an average of 6 hours reviewing and updating their policies and procedures once per year, or 4,890 hours annually. We estimate that an additional 1,265 larger institutions spend an average of 30 hours to review and update their safeguard policies and procedures, or 37,950 hours each year. Accordingly, we estimate that the annual burden for covered institutions that review and update their safeguard policies and procedures is 42,840 hours. We therefore estimate a total of 2,529 respondents and an annual burden of 91,575 hours associated with the rule's collection of information requirement.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. The safeguard rule does not require the reporting of any information or the filing of any documents with the Commission. The collection of information required by the safeguard rule is mandatory.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*.

Dated: May 30, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10847 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request; Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

*Extension:* Form F–6; OMB Control No. 3235–0292; SEC File No. 270–270.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

The Commission exercised its authority under Section 19 of the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) to establish Form F–6 for registration of American Depositary Receipts (ADRs) of foreign companies. Form F–6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F–6 takes approximately 1 hour per response to prepare and is filed by 150 respondents annually. We estimate that 25% of the 1 hour per response (.25 hours) is prepared by the filer for a total annual reporting burden of 37.5 hours (.25 hours per response × 150 responses).

The information provided on Form F–6 is mandatory to best ensure full disclosure of ADRs being issued in the U.S. All information provided to the Commission is available for public review upon request.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and

(ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2007.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10848 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55837; File No. SR–Amex–2006–99]**

### Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to Reverse Mergers and Shareholder Approval for Change of Control Situations

May 31, 2007.

### I. Introduction

On October 5, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act (''Act''), and Rule 19b–4 thereunder,[2] a proposed rule change relating to reverse mergers. On February 14, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on March 22, 2007.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 makes revisions to the proposed rule text, including revisions conforming the proposed rule text to a filing submitted by The NASDAQ Stock Market LLC (''Nasdaq'') and approved by the Commission in the period following submission of the original filing (Securities Exchange Act Release No. 55052 (January 5, 2007), 72 FR 1569 (January 12, 2007) (SR–NASDAQ–2006–047)) and revisions incorporating an immediately effective filing submitted by Amex in the same period (Securities Exchange Act Release No. 55096 (January 12, 2007), 72 FR 2563 (January 19, 2007) (SR–Amex–2007–03)). Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 55477 (Mar. 15, 2007), 72 FR 13542.

**II. Description of the Proposal**

The Exchange proposes to amend (i) Section 341 of the Amex Company Guide (''Guide'') to clarify the circumstances under which a listed issuer will be deemed to have engaged in a reverse merger thereby requiring the post-transaction entity to satisfy the initial listing standards and the process a listed issuer must follow when applying for initial listing in connection with a reverse merger and (ii) Section 713 of the Guide to require shareholder approval in connection with the issuance or potential issuance of additional listed securities that will result in a change of control of a listed issuer.

Section 341 of the Guide currently provides that if an issuer listed on the Amex engages in any plan of acquisition, merger or consolidation, the net effect of which is that the listed issuer is acquired by an unlisted entity, even if the listed issuer is the nominal survivor, the post-transaction entity is required to satisfy the initial listing standards. Such transactions are typically referred to as ''Reverse Mergers.'' Because the issuer resulting from a Reverse Merger is essentially a different entity from the listed issuer, Section 341 does not permit the post-transaction entity to remain listed on the Amex unless it qualifies as a new listing. The Exchange stated that this prohibition is intended to prevent ''back door listings'' whereby an unqualified entity attempts to obtain an Amex listing. Both the New York Stock Exchange LLC (''NYSE'') [5] and Nasdaq [6] have comparable provisions.

The Exchange stated that many Reverse Mergers are entered into for *bona fide* business reasons; however, in some cases listed issuers that are not in compliance with the continued listing standards, and face potential delisting, attempt to enter into Reverse Mergers with private entities in order to retain their Amex listing. In other situations, the Exchange explained that a listed issuer may be in compliance with the continued listing standards but the post-transaction entity would not satisfy the initial listing standards. In both of these cases, a change of control occurs but the listed issuer attempts to structure the transaction so that it will not be deemed a Reverse Merger under the current rule.

The Exchange proposes amending Section 341 to provide greater clarity and transparency as to (i) What constitutes a Reverse Merger, (ii) the factors the Exchange will consider in determining whether a transaction or series of transactions constitute(s) a Reverse Merger, (iii) the consequences of entering into a Reverse Merger and (iv) the process a listed issuer must follow in connection with a Reverse Merger. The proposed rule change will provide that, in addition to meeting the initial listing standards, a listed company entering into a Reverse Merger will need to obtain shareholder approval in accordance with Section 713 in order to issue additional listed securities in connection with such Reverse Merger. In addition, while the determination of whether a Reverse Merger has occurred or will occur is to some degree subjective, the Exchange proposes to amend Section 341 to more clearly delineate the factors that will be considered by the Exchange in its analysis of a transaction.[7]

Section 341 currently recommends that listed issuers submit any proposed plan which could constitute a Reverse Merger to the Exchange for an informal opinion prior to the plan's promulgation. The Exchange stated that the intent of such provision is to permit Exchange staff to review the proposed transaction in order to determine if it constitutes a Reverse Merger and, in the case of a Reverse Merger, to review the post-transaction entity in order to confirm that it will meet initial listing standards. The Exchange proposes to make such process more transparent by requiring a listed issuer to submit an initial listing application with sufficient time to permit the Exchange to complete its review of the post-transaction entity and providing that delisting proceedings will be commenced if such initial listing application has not been approved prior to consummation of the Reverse Merger. The Commission approved a similar rule change filed by Nasdaq.[8]

In association with the proposed changes to Section 341, the Exchange also proposes to amend Section 713. Section 713 currently requires shareholder approval as a prerequisite to Exchange approval of applications to list additional shares issued in connection with a transaction (other than a public offering) which would involve the application of the initial listing standards in evaluating an acquisition of a listed company by an unlisted company under Section 341 of the Guide. The Exchange proposes revising Section 713 to require shareholder approval as a prerequisite to Exchange approval of additional listing applications when the issuance or potential issuance of additional securities will result in a change of control of a listed issuer, regardless of whether such change of control also constitutes a Reverse Merger. Additionally, the Exchange proposes changes to Sections 341 and 713 to clarify the relationship between their respective requirements. Both NYSE [9] and Nasdaq [10] require shareholder approval for change of control transactions and the Exchange believes it is necessary and appropriate to require listed issuers to obtain shareholder approval of any issuance or potential issuance of additional listed securities that will result in a change of control.

**III. Discussion**

After careful review of the proposal, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal will help listed companies by providing greater clarity as to the process a listed company must follow in connection with a reverse merger. More specifically, the Commission notes that the proposed rule change provides guidance to issuers on what constitutes a Reverser Merger under the Exchange's rules, as well as the consequences of such a transaction, including potential

[5] Section 703.08(E) of the NYSE Listed Company Manual.

[6] Nasdaq Rule 4340(a).

[7] The Exchange's proposed Section 341 states that a ''Reverse Merger'' is: ''any plan of acquisition, merger or consolidation whereby a listed company combines with, or into, a company not listed on the Exchange, resulting in a change of control of the listed company and potentially allowing such unlisted company to obtain an Exchange listing. In determining whether a change of control constitutes a Reverse Merger, the Exchange will consider all relevant factors, including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the listed company. The Exchange will also consider the nature of the businesses and the relative size of both the listed and the unlisted companies.'' *See* proposed Section 341 of the Guide.

[8] *See supra* note 3.

[9] Section 312.03(d) of the NYSE Listed Company Manual.

[10] Nasdaq Rule 4350(i)(1)(B).

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

delisting. This additional guidance may be helpful to investors as well.

Finally, the Commission notes that the Exchange is clarifying and broadening its shareholder approval rules by requiring shareholder approval in all change of control situations, not just Reverse Mergers, which will protect investors and the public interest. This should allow investors of listed issuers to participate in important corporate decisions involving a change of control. While certain change of control situations would require shareholder approval under other provisions of the Guide, this proposal ensures that all change of control situations must be approved by shareholders, thereby strengthening the Exchange's shareholder approval requirements, and is consistent with comparable rules of the New York Stock Exchange and Nasdaq.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Amex–2006–99) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10871 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55826; File No. SR–CBOE–2007–47]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Permanent Approval of the Preferred Market Maker Program

May 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make the Preferred Market Maker Program permanent. The text of the proposed rule change is available on CBOE's Web site at *http://www.cboe.org/legal*, at the Exchange's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In June, 2005, CBOE obtained approval of a filing adopting a Preferred DPM Program.[3] This allowed order providers to send orders to the Exchange designating a Preferred DPM from among the DPM complex. If the Preferred DPM was quoting at the NBBO at the time the order was received by CBOE, the Preferred DPM was entitled to the entire DPM participation entitlement. The Exchange subsequently modified the applicable participation entitlement percentages under the program[4] and, then expanded the scope of the program to apply to qualifying Market Makers (as opposed to just DPMs).[5] At that time the program was renamed the Preferred Market Maker Program.

The Preferred Market Maker Program has been operating on a pilot basis. The pilot is due to expire on June 2, 2007. Since the Pilot was put into operation it has been positively received by the options trading community. There has not been any adverse or unanticipated negative impact on the market by the presence of the Preferred Market Maker Program. Further, CBOE believes that the pilot program helps generate greater order flow for the Exchange which in turn adds depth and liquidity to CBOE's markets.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act[6] and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File

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[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51779 (June 2, 2005), 70 FR 33564 (June 8, 2005) (approving SR–CBOE–2004–71).

[4] *See* Securities Exchange Act Release Nos. 51824 (June 10, 2005), 70 FR 35476 (June 20, 2005) (approving SR–CBOE–2005–45); and 52021 (July 13, 2005), 70 FR 41462 (July 19, 2005) (approving SR–CBOE–2005–50).

[5] *See* Securities Exchange Act Release No. 52506 (September 23, 2005), 70 FR 57340 (September 30, 2005) (approving SR–CBOE–2005–58).

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(5).

Number SR–CBOE–2007–47 on the subject line.

*Paper Comments*

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-CBOE–2007–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–47 and should be submitted on or before June 27, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange,[10] and, in particular, the requirements of Section 6(b)(5) of the Act.[11] Section 6(b)(5) requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Exchange's Preferred Market Maker Program was approved on a pilot basis approximately two years ago.[12] The Exchange has asked the Commission to approve the Exchange's Preferred Market Maker Program on a permanent basis. For the reasons noted by the Commission when it initially approved the Exchange's Preferred Market Maker Program on a pilot basis, the Commission continues to believe that the Exchange's Preferred Market Maker Program does not jeopardize market integrity or the incentive for market participants to post competitive quotes.[13] Accordingly, the Commission finds that the proposal is consistent with the Act.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. The Commission believes that granting accelerated approval of the proposed rule change would allow the Exchange's Preferred Market Maker to continue without disruption beyond the June 2, 2007 expiration date of the current pilot program. Accordingly, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2007–47), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10790 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

[9] 15 U.S.C. 78f.

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15.U.S.C. 78f(b)(5).

[12] *See* notes 3 to 5, *supra.*

[13] *See* note 3, *supra.*

[14] 15 U.S.C. 78s(b)(2).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55833; File No. SR–ISE–2007–28]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Expiration of an ISE Stock Exchange Fee Waiver and the Granting of a Fee Waiver for Certain Other Transactions

May 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 1, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. On May 29, 2007, the ISE filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to reflect the expiration of a fee waiver related to all transactions executed on the ISE Stock Exchange (''ISE Stock'') and to allow for a waiver of certain transactions executed on ISE Stock. The text of the proposed rule change is available at *http://www.iseoptions.com* and the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend the Schedule of Fees to reflect the expiration of a fee waiver related to all MidPoint Match (''MPM'') transactions executed on ISE Stock, a facility of the Exchange, and to allow for a waiver of certain other MPM transactions executed on ISE Stock. The Exchange currently waives all execution fees for MPM transactions in an effort to promote trading on ISE Stock. The Exchange currently waives all execution fees in an effort to promote trading on ISE Stock.[3] The fee waiver is scheduled to expire on May 1, 2007.[4]

The Exchange proposes to waive the transaction fee applicable to executions in MPM when the same firm enters a MPM buy order which executes against that same firm's MPM sell order. However, the Exchange represents that, due to the configuration of session lines carrying orders for multiple firms, it is not always possible for the Exchange to determine who the originating firm is that entered the order. Accordingly, for a firm to avail itself of this waiver, the firm must ensure that the MPM order sent by it, or on its behalf, is marked with the firm's identifier or is uniquely identified by submission on a dedicated session. A firm may contact the Exchange to set up its own dedicated session line, whereby all MPM orders sent by it will be identified as that member's order and will be afforded the waiver anytime one of its MPM buy orders executes against one of its own MPM sell orders. Alternatively, a firm may contact a service bureau that is connected to ISE to have the service bureau allocate a session line solely for that firm's orders, *i.e.*, creating a dedicated session line for that firm. In those situations where one firm submits MPM orders to the Exchange over different session lines, the Exchange represents that so long as the firm is identifiable as the originating firm on both sides of the MPM execution, the firm will be afforded the waiver, regardless of what line the MPM orders were submitted through.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4)[5] that the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2) thereunder,[7] because it establishes or changes a due, fee, or other charge imposed by the Exchange. Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–28 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–28. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–28 and should be submitted on or before June 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10873 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

[3] *See* Securities Exchange Act Release No. 54561 (October 2, 2006), 71 FR 59844 (October 11, 2006).

[4] *See* Securities Exchange Act Release No. 55560 (March 29, 2007), 72 FR 16837 (April 5, 2007).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 29, 2007, the date on which the ISE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55836; File No. SR–ISE–2007–31]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fee Changes

May 31, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 2, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the ISE. The ISE has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on two Premium Products.[5] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and at *http://www.iseoptions.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following two Premium Products: Rydex S&P Equal Weight ETF (''RSP'') [6] and iShares Goldman Sachs Semiconductor Index Fund (''IGW'').[7] The Exchange represents that RSP and IGW are eligible for options trading because they constitute ''Fund Shares,'' as defined by ISE Rule 502(h).

All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on RSP and IGW.[8] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [9] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[10] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.16 and $0.03 per contract, respectively. Further, since options on RSP and IGW are multiply-listed, the Payment for Order Flow fee shall also apply. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Further, the Exchange proposes to remove IWF, IWP, IWS and IWV from its Schedule of Fees because the Exchange recently delisted these four Premium Products, and they no longer trade on the Exchange.[11]

Finally, the Exchange notes that the symbol for EENC has changed to ENT,[12] and the Schedule of Fees has been updated to reflect that change.[13]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that

[6] ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' ''Standard & Poor's 500,'' ''500,'' and ''S&P 500 Equal Weight Index'' are trademarks of The McGraw-Hill Companies, Inc. (''McGraw-Hill'') and have been licensed for use by Rydex Global Advisors and its affiliates (''Rydex''). RSP is not sponsored, sold, promoted or endorsed by S&P, a division of McGraw-Hill, and S&P makes no representation regarding the advisability of investing in RSP. All other trademarks, service marks, or registered trademarks are the property of their respective owners. Neither Rydex nor S&P have licensed or authorized ISE to (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on RSP or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on RSP or with making disclosures concerning options on RSP under any applicable federal or state laws, rules or regulations. Rydex and S&P do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[7] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''Goldman Sachs'' and ''Goldman Sachs Technology Industry Semiconductor Index'' are service marks of Goldman Sachs and Co. (''Goldman Sachs'') and have been licensed for use for certain purposes by BGI. IGW is not sponsored, endorsed, sold or promoted by Goldman Sachs, and Goldman Sachs makes no representation regarding the advisability of investing in IGW. All other trademarks, service marks or registered trademarks are the property of their respective owners. Neither BGI nor Goldman Sachs have licensed or authorized ISE to (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IGW or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IGW or with making disclosures concerning options on IGW under any applicable federal or state laws, rules or regulations. BGI and Goldman Sachs do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] The Exchange represents that these fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900). See Securities Exchange Act Release No. 54204 (July 25, 2006), 71 FR 43548 (August 1, 2006) (SR–ISE–2006–38).

[9] ''Public Customer Order'' is defined in ISE Rule 100(a)(39) as an order for the account of a Public Customer. ''Public Customer'' is defined in ISE Rule 100(a)(38) as a person that is not a broker or dealer in securities.

[10] The execution fee is currently between $.21 and $.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $.03 per contract side.

[11] Certain clarifying language changes were made to the original filing. Telephone call between Samir Patel, Assistant General Counsel, ISE and Richard Holley, Special Counsel, Division of Market Regulation, Commission, on May 25, 2007.

[12] On February 9, 2007, Enterra Energy Trust, whose options are currently traded on the Exchange, changed its ticker symbol from EENC to ENT.

[13] *See supra* note 11.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2007–31 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–31 and should be submitted on or before June 27, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10874 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55822; File No. SR–NASDAQ–2007–022]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto To Change the Conflicts of Interest Rule

May 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2007, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. On April 26, 2007, Nasdaq submitted Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as modified by Amendment No. 1 and approves the proposed rule change, as amended, on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

Nasdaq proposes to modify Nasdaq's conflicts of interest rule to eliminate the requirement that related party transactions be approved by a listed company's audit committee or another independent body of the board of directors. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in brackets.[3]

* * * * *

4350. Qualitative Listing Requirements for Nasdaq Issuers Except for Limited Partnerships

(a)–(g) No change.

(h) Conflicts of Interest

Each issuer shall conduct [an] appropriate review *and oversight* of all related party transactions for potential conflict of interest situations on an ongoing basis [and all such transactions must be approved] by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term ''related party transaction'' shall refer to transactions required to be disclosed pursuant to SEC Regulation S–K, Item 404. However, in the case of small business issuers (as that term is defined in SEC Rule 12b–2), the term ''related party transactions'' shall refer to transactions required to be disclosed pursuant to SEC Regulation S–B, Item 404, and in the case of non-U.S. issuers, the term ''related party transactions'' shall refer to transactions required to be disclosed pursuant to Form 20–F, Item 7.B.

(i)–(n) No change.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Nasdaq's proposed changes are marked to the rule text that appears in Nasdaq's electronic manual found at (*http://www.nasdaq.complinet.com*).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to modify its rule governing the review and approval of related party transactions by listed companies. Specifically, Nasdaq proposes to eliminate the requirement in Nasdaq Rule 4350(h) that related party transactions be approved by a listed company's audit committee or another independent body of the board of directors. The existing rule requires both an appropriate review of related party transactions on an ongoing basis and approval of those transactions by the company's audit committee or another independent body of the board of directors. The rule, as proposed, would continue to require ongoing review of related party transactions by a company's audit committee or another independent body of the board of directors. In addition, the proposed rule text would clarify that the issuer's audit committee or other independent body of the board must provide appropriate oversight of related party transactions.[4] For the purposes of the rule, the term ''related party transaction'' generally is defined as a transaction that is required to be disclosed in Regulation S–K under the Securities Act of 1933.[5]

The growing focus on internal controls over the past few years has led more companies to look closely at related party transactions. Also, Nasdaq notes that within the past year, the Commission has adopted significant revisions to its rules regarding related party transactions.[6] In addition to adopting a principles-based disclosure requirement, the new rules require disclosure regarding a company's policies and procedures for the review, approval, or ratification of related party transactions. Nasdaq believes that this disclosure requirement would further advance the trend toward obtaining approval of related party transactions as a corporate governance best practice, thereby reducing the need for Nasdaq to impose an approval requirement in its corporate governance listing standards.

Nasdaq also notes that the comparable rules of the New York Stock Exchange, Inc. (''NYSE'') and the American Stock Exchange LLC (''Amex'') do not include an approval requirement.[7] Accordingly, the proposed rule change would conform Nasdaq's rule to the NYSE's and Amex's rules, creating more uniformity across market centers with respect to the review and oversight of related party transactions by listed companies and reducing questions of compliance for issuers that move their listing to a different market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Section 6(b)(5) of the Act,[9] in particular. Section 6(b)(5) requires, among other things, that Nasdaq's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change will benefit issuers by providing additional clarity and transparency to Nasdaq's requirements relating to related party transactions and promoting greater uniformity with existing standards of the NYSE and Amex. The additional clarity, transparency and greater uniformity will reduce administrative costs associated with compliance with Nasdaq's rules on conflicts of interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–022 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2007–022 and should be submitted on or before June 27, 2007.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] The Commission notes that

[4] *See* Amendment No. 1 to the proposed rule change.

[5] 17 CFR 229.404. For small business issuers, the relevant definition of ''related party transaction'' is those transactions required to be disclosed by SEC Regulation S–B, Item 404, 17 CFR 228.404. For non-U.S. issuers, the term ''related party transactions'' refers to transactions required to be disclosed pursuant to Form 20–F, Item 7.B.

[6] *See* Securities Exchange Act Release No. 54302 (August 29, 2006), 71 FR 53158 (September 8, 2006) (File No. S7–03–06) (relating to executive compensation and related person disclosure).

[7] *See* Section 307.00 of the NYSE Listed Company Manual; Section 120 of the Amex Company Guide.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

the proposed rule change would align Nasdaq's corporate governance listing standards regarding related party transactions with comparable provisions of other exchanges.

The Commission finds good cause pursuant to Section 19(b)(2) of the Act[11] to approve the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register**. As noted above, the proposed rule change would amend Nasdaq's corporate governance listing standards regarding related party transactions by conforming these standards with comparable provisions of other exchanges, and thus the proposed rule change does not present any new regulatory issues. Accelerating approval of the proposed rule change would promote greater uniformity among the exchanges' corporate governance rules for listed issuers.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASDAQ–2007–022), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10791 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–55812; File No. SR–Phlx–2006–61]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments No. 2 and No. 4 Thereto Relating to Order and Decorum Regulations

May 24, 2007.

### I. Introduction

On September 26, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's Option Order and Decorum Regulations. On November 14, 2006, the Exchange filed Amendment No. 1 to the proposed rule change, which was subsequently withdrawn.[3] On January 19, 2007, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 27, 2007.[5] The Commission received no comments regarding the proposal. On May 4, 2007, the Exchange filed Amendment No. 3 to the proposed rule change, which was subsequently withdrawn.[6] On May 14, 2007, the Exchange filed Amendment No. 4 to the proposed rule change.[7] This order approves the proposed rule change, as amended.

### II. Description of Proposal

The Exchange proposes to amend the Exchange's Option Order and Decorum Regulation 2 (Food, Liquids and Beverages); Regulation 4 (Order); Regulation 5 (Visitors and Applicants); and Regulation 6 (Dress), pursuant to Exchange Rule 60. The Exchange's amendments to these Exchange regulations include the following:

(i) An amendment to Exchange Regulation 2 that (1) Allows Exchange members and associated persons to consume foods, liquids and beverages on the Exchange's trading floor, provided that such consumption does not unreasonably interfere with business on the trading floor, (2) adds language concerning vandalism, (3) increases the fines associated with violations of Exchange Regulation 2, (4) adds additional fines for violating trash, litter and vandalism regulations, and (5) changes the title of the Exchange Regulation 2 from ''Food, Liquids and Beverages'' to ''Food, Liquids and Beverages, Trash, Litter and Vandalism;''

(ii) An amendment to Exchange Regulation 4 that adds language clarifying that the use of profanity is a violation of this Regulation;

(iii) An amendment to Exchange Regulation 5 that authorizes an Exchange official or Options Exchange Official to permit visitors on the trading floor;

(iv) An Amendment to Exchange Regulation 6 that (1) Clarifies what business attire is deemed acceptable on the trading floor, and (2) increases the amount of fines associated with violations of Exchange Regulation 6; and

(v) Amendments to Exchange Regulations 2, 4, 5 and 6 that add language indicating that Exchange Staff may impose fines for breaches of order, decorum, health, safety and welfare on the members, member organizations, participants, participant organizations and their associated persons.

### III. Discussion and Commission Findings

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, the Commission finds that proposed amendments to the Exchange's order and decorum regulations would assist the Exchange in maintaining an orderly operating environment, which is consistent with the protection of investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 6(b)(6) of the Act[11] which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder. Specifically, the Commission finds that the Exchange's proposed disciplinary sanctions and fines for violations of its order and decorum regulations are consistent with normal regulatory safeguards that an exchange should provide under the Act to ensure the order and operation of its trading floor. In particular, these proposed fines appear to provide an

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On January 12, 2007, Phlx withdrew Amendment No. 1.

[4] Amendment No. 2 replaced the original proposed rule change in its entirety.

[5] *See* Securities Exchange Act Release No. 55492 (March 20, 2007), 72 FR 14321 (''Notice'').

[6] On May 14, 2007, Phlx withdrew Amendment No. 3.

[7] In Amendment No. 4, the Exchange deleted proposed rule text from Exchange Regulation 2 regarding the registration of equipment on the Exchange floor. This deletion conformed the proposed rule text with changes the Exchange made to the proposal in Amendment No. 2. This is a technical amendment and is not subject to notice and comment.

[8] In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(6).

appropriate sanction for violations of the Exchange's order and decorum rules and should help to deter violations. This proposed rule change also makes clear that fines can be imposed against the Exchange's members, member organizations, participants, participant organizations and their associated persons for violations of the Exchange's rules.

**IV. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change, as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–10872 Filed 6–5–07; 8:45 am]

**BILLING CODE 8010–01–P**

## DEPARTMENT OF TRANSPORTATION

**[Docket No. OST–2007–27407]**

### National Surface Transportation Infrastructure Financing Commission

**AGENCY:** Department of Transportation (DOT).

**ACTION:** Notice of meeting location and time.

**SUMMARY:** This notice lists the location and time of the second and third meetings of the National Surface Transportation Infrastructure Financing Commission.

**FOR FURTHER INFORMATION CONTACT:** John V. Wells, Chief Economist, U.S. Department of Transportation, (202) 366–9224, *jack.wells@dot.gov.*

**SUPPLEMENTARY INFORMATION:** By **Federal Register** Notice dated March 12, 2007, the U.S. Department of Transportation (the ''Department'') issued a notice of intent to form the National Surface Transportation Infrastructure Financing Commission (the ''Financing Commission''), in accordance with the requirements of the Federal Advisory Committee Act (''FACA'') (5 U.S.C. App. 2) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (''SAFETEA–LU'') (Pub. L. 109–59, 119 Stat. 1144). Section 11142(a) of SAFETEA–LU established the National Surface Transportation Infrastructure Financing Commission and charged it with analyzing the future highway and transit needs and the finances of the Highway Trust Fund and with making recommendations regarding alternative approaches to financing transportation infrastructure. The Financing Commission held its inaugural meeting on April 25, 2007.

**Notice of Meeting Location and Time**

During its inaugural meeting, the Financing Commission agreed to hold its second and third meetings from 9:30 a.m. to 5 p.m. on Wednesday, June 20, 2007, and Monday, July 16, 2007. Both meetings will be open to the public. The meetings are scheduled to take place at the Oklahoma City Memorial Conference Room on the ground floor of the west wing of the Department's new headquarters building, located at 1200 New Jersey Avenue, SE., Washington, DC 20590.

If you need accommodations because of a disability or require additional information to attend either of these meetings, please contact Robert Mariner in the office of the Assistant Secretary for Transportation Policy via e-mail at *robert.mariner@dot.gov,* or by phone at (202) 493–0064.

Issued on May 21, 2007.

**John V. Wells,**

*Chief Economist, U.S. Department of Transportation, Designated Federal Official.*

[FR Doc. E7–10901 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2007–23]**

### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 26, 2007.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2007–27291 using any of the following methods:

- *DOT Docket Web site:* Go to *http://www.dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.dms.dot.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

**FOR FURTHER INFORMATION CONTACT:** Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 29, 2007.

**Pamela Hamilton-Powell,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2007–27291.

*Petitioner:* Liberal Municipal Airport.

*Section of 14 CFR affected:* 139.319(h)(2)(i).

*Description of relief sought:* To allow Liberal Municipal Airport to operate without meeting the requirements for aircraft rescue and fire fighting equipment manned and ready to respond for air carrier operations.

[FR Doc. 07–2822 Filed 6–5–07; 8:45 am]

**BILLING CODE 4910–13–M**

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35034]**

### Carolina Coastal Railway, Inc.—Lease and Operation Exemption—Norfolk Southern Railway Company

Carolina Coastal Railway, Inc. (CLNA), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Norfolk Southern Railway Company (NSR) and to operate approximately 133.4 miles of rail line known as the Raleigh-Plymouth line extending between (1) Milepost NS–132.0 at Chocowinity, Beaufort County, NC, and milepost NS–228.0 at Raleigh, Wake County, NC, and (2) milepost NS–127.4 at Phosphate Junction, Beaufort County, NC, and milepost NS–90.0 at the end of the track at Plymouth, Washington County, NC, including the right-of-way and adjacent real property described as The Pocket Track and the Old Engine/Shop Tracks located in Chocowinity Yard, and the remaining former East Carolina Railway trackage (now industrial spurs) in Farmville, NC. As part of the transaction, CLNA also will acquire 8.6 miles of incidental overhead trackage rights within (a) Raleigh Yard, between milepost NS–228.0 and milepost NS–232.0 for interchange purposes, and (b) Chocowinity Yard, between milepost NS–127.4 and milepost NS–132.0 for interchange purposes and connectivity of its lines.

CLNA certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

The transaction is expected to be consummated on or after June 21, 2007.[1]

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 14, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35034, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, John D. Heffner, PLLC, 1920 N Street, NW., Suite 800, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 30, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–10773 Filed 6–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 35019]**

### Western New York and Pennsylvania Railroad, LLC—Lease and Operation Exemption—Certain Assets of Norfolk Southern Railway Company and Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority

Western New York and Pennsylvania Railroad, LLC (WNYP), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Chautauqua, Cattaraugus, Allegany and Steuben Southern Tier Extension Railroad Authority (STERA), and Norfolk Southern Railway Company (NSR), and operate approximately 98.3 miles of rail line extending between Machias Junction, NY, and Driftwood, PA, in Cattaraugus County, NY, and McKean, Potter and Cameron Counties, PA (the line).[1] The end points of the line are as follows: (1) Between milepost BR 44.7 and milepost BR 134.0 (the Buffalo Line); (2) between milepost FV 0.0 and milepost FV 6.6 (the Farmer's Valley Secondary Line); and (3) between milepost YS 114.5 and milepost YS 116.9 (the Olean Branch). NSR will retain detour rights over the line pursuant to a standard form detour agreement adopted by the Association of American Railroads.

WNYP certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier. Because the projected annual revenues of the line, together with WNYP's projected annual revenue will exceed $5 million, WNYP states that it has served the national offices of all labor unions with employees on the line with a copy of a notice of its intent to undertake this transaction and posted such notice at the workplace of the employees on the affected line on April 18, 2007.

By petition filed on May 22, 2007, the United Transportation Union-New York State Legislative Board (UTU–NY) requests that the Board reject WNYP's notice of exemption for failure to meet the requirements of 49 CFR 1150.42(e).[2] UTU–NY maintains that WNYP was required to notify the Board at least 60 days prior to the proposed effective date of the exemption that the required notice had been given to employees. Alternatively, UTU–NY requests that the exemption not become effective until July 16, 2007. WNYP asserts that it served and posted the required information for employees on April 18, 2007, but it has not certified to the Board that it has done so.

In a letter filed May 25, 2007, WNYP seeks a waiver of the requirements of 49 CFR 1150.42(e) insofar as it relates to certifying to the Board that it has complied with those requirements at least 60 days prior to the effective date of the exemption. WNYP thus seeks a Board ruling that would permit the exemption in this proceeding to become effective on June 25, 2007. WNYP acknowledges that, although the Board's regulations do not require the filing of the labor notice with the Board, the Board has interpreted the 60-day advance notice requirement in 49 CFR 1150.42(e) not only to apply to service and posting of the required labor notice, but also to certification to the Board of that service and posting.

UTU–NY replied in opposition to the petition for waiver on May 29, 2007. The Board will rule on WNYP's waiver request in a subsequent decision. Unless the Board grants the waiver request, the earliest this transaction may be consummated will be 60 days after certification of compliance with the

[1] The lease agreement provides for a term of 20 years from date of the agreement with a renewal term of 10 years. The lease may be terminated by either party prior to the end of the term in accordance with the lease provisions. The parties must seek appropriate Board authority to terminate these provisions.

[1] STERA owns the portion of the line located in Cattaraugus County. NSR owns the portion of the line located in McKean, Potter and Cameron Counties, and is the current operator of the entire line. In accordance with the lease provisions, the lease term is 14 years, with a renewal term of 10 years, which may be terminated by either party prior to the end of the term.

[2] Under 49 CFR 1150.42(e), ''If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds $5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and *certify to the Board that it has done so*'' (emphasis added).

requirements of 49 CFR 1150.42(e) is received by the Board.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than June 11, 2007.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35019, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. Also, a copy of each pleading must be served on Janie Sheng, Kirkpatrick & Lockhart Preston Gates Ellis LLP, 1601 K Street, NW., Washington, DC 20006.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–10883 Filed 6–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–1011X]**

### Northern Lines Railway, LCC-Discontinuance of Service Exemption-in Stearns County, MN

Northern Lines Railway, LCC (NLR) [1] has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 0.77-mile line of railroad between milepost 16.21 and milepost 16.98, near Cold Spring, in Stearns County, MN.[2] The line traverses United States Postal Service Zip Code 56320.

NLR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 6, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[3] must be filed by June 18, 2007.[4] Petitions to reopen must be filed by June 26, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NLR's representative: Karl Morell, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 30, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. E7–10772 Filed 6–5–07; 8:45 am]

**BILLING CODE 4915–01–P**

[1] NLR was authorized to lease and operate the line in *Northern Lines Railway, LLC—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 34627 (STB served Jan. 6, 2005).

[2] BNSF Railway Company (BNSF) was authorized to abandon the above-described line in *BNSF Railway Company—Abandonment Exemption—in Stearns County, MN*, STB Docket No. AB–6 (Sub-No. 455X) (STB served May 7, 2007). While BNSF was authorized to abandon its rail line located between milepost 16.21 and milepost 17.00, NLR's lease only extended to milepost 16.98, explaining the 0.02-mile difference in mileages sought by BNSF and NLR.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[4] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 31, 2007.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

*Dates:* Written comments should be received on or before July 6, 2007 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–2051.

*Type of Review:* Extension.

*Title:* Credit for Federal Telephone Excise Tax Paid.

*Form:* 8913.

*Description:* In May 2006, the IRS issued Notice 2006–50 stating ''taxpayers may be entitled to request a credit or refund of the federal excise tax on nontaxable telephone service. The refund period is for nontaxable service billed after February 28, 2003 and before August 1, 2006. The credit or refund must be claimed on a 2006 income tax return. Form 8913 has been developed to allow taxpayers to compute the actual amount of refund for each month of the 14 refund periods. Taxpayers must also calculate the interest due on the refund. Factors have been provided for each refund period. The tax and interest is combined on Form 8913 and one amount is transferred to the appropriate income tax return. The burden hours were decreased due to SOI Research providing more realistic filing figures based on actual filings of the form.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 67,608,000 hours.

*OMB Number:* 1545–1603.

*Type of Review:* Extension.

*Title:* REG–104691–97 (Final) Electronic Tip Report.

*Description:* The regulations provide rules authorizing employers to establish electronic systems for use by their tipped employees in reporting tips to their employer. The information will be used by employers to determine the amount of income tax and FICA tax to

withhold from the tipped employee's wages.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 600,000 hours.

*OMB Number:* 1545–1081.

*Type of Review:* Extension.

*Title:* Request for Extension of Time to File Information Returns.

*Form:* 8809.

*Description:* Form 8809 is used to request an extension of time to file certain information returns. It is used by IRS to process requests expeditiously and to track from year to year those who repeatedly ask for an extension.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 162,500 hours.

*OMB Number:* 1545–0754.

*Type of Review:* Extension.

*Title:* LR–255–81 (Final) Substantiation of Charitable Contributions.

*Description:* Congress intended that the IRS prescribe rules and requirements to assure substantiation and verification of charitable contributions. The regulations serve these purposes.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 2,158,000 hours.

*OMB Number:* 1545–0782.

*Type of Review:* Extension.

*Title:* LR–7 (TD 6629) Final, Limitation on Reduction in Income Tax Liability Incurred to the Virgin Islands.

*Description:* The Tax Reform Act of 1986 repealed the mandatory reporting and recordkeeping requirements of section 934(d) (1954 Code). The prior exception to the general rule of section 934 (1954 Code) to prevent the Government of the Virgin Islands from granting tax rebates with regard to taxes attributable to income derived from sources within the U.S. was contingent upon the taxpayer's compliance with the reporting requirements of section 934(d).

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 184 hours.

*OMB Number:* 1545–0786.

*Type of Review:* Extension.

*Title:* INTL–50–86 (Final) (TD 8110) Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

*Description:* The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j)) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be institutions holding bearer obligations.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 39,742 hours.

*OMB Number:* 1545–0773.

*Type of Review:* Extension.

*Title:* TD 8172 (Final) Qualification of Trustee or Like Fiduciary in Bankruptcy.

*Description:* IRC section 6036 requires executors or receivers to advise the district director of their appointment or authorization to act. This information is necessary so that IRS will know of the proceedings and who to contact for delinquent returns or taxes.

*Respondents:* Individuals or households.

*Estimated Total Burden Hours:* 12,500 hours.

*OMB Number:* 1545–1722.

*Type of Review:* Extension.

*Title:* Extraterritorial Income Exclusion.

*Form:* 8873.

*Description:* A taxpayer uses Form 8873 to claim the gross income exclusion provided for by section 114 of the Internal Revenue Code.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 19,087,500 hours

*OMB Number:* 1545–1013.

*Type of Review:* Extension.

*Title:* Return of Excise Tax on Undistributed Income of Real Estate Investment Trusts.

*Form:* 8612.

*Description:* Form 8612 is used by real estate investment trusts to compute and pay the excise tax on undistributed income imposed under section 4981. IRS uses the information to verify that the correct amount of tax has been reported.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 196 hours.

*OMB Number:* 1545–0213.

*Type of Review:* Extension.

*Title:* Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax.

*Form:* 5578.

*Description:* Form 5578 is used by private schools that do not file Schedule A (Form 990) to certify that they have a racially nondiscriminatory policy toward students as outlined in Rev. Proc 75–50. The Internal Revenue Service uses the information to help ensure that the school is maintaining a nondiscriminatory policy in keeping with its exempt status.

*Respondents:* Not-for-profit institutions.

*Estimated Total Burden Hours:* 3,730 hours.

*OMB Number:* 1545–1748.

*Type of Review:* Revision.

*Title:* REG–106917–99 (Final) Changes in Accounting Periods.

*Description:* Section 1.441–2(b)(1) requires certain taxpayers to file statements on their federal income tax returns to notify the Commissioner of the taxpayers' election to adopt a 52–53 week taxable year. Section 1.442–1(b)(4) provides that certain taxpayers must establish books and records that clearly reflect income for the short period involved when changing their taxable year to a fiscal taxable year. Section 1.442–1(d) requires a newly married husband or wife to file a statement with their short period return when changing to the other spouse's taxable year.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 500 hours.

*OMB Number:* 1545–1878.

*Type of Review:* Extension.

*Title:* IRS e-file Signature Authorization for an Exempt Organization.

*Form:* 8879–EO.

*Description:* Form 8879–EO authorizes an officer of an exempt organization and electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign an organization's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent.

*Respondents:* Not-for-profit institutions.

*Estimated Total Burden Hours:* 3,432 hours.

*OMB Number:* 1545–0201.

*Type of Review:* Extension.

*Title:* Request for Change in Plan/Trust Year.

*Form:* 5308.

*Description:* Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 339 hours.

*OMB Number:* 1545–0874.

*Type of Review:* Extension.

*Title:* Carryforward Election of Unused Private Activity Bond Volume Cap.

*Description:* Section 146(f) of the Internal Revenue Code requires that issuing authorities of certain types of tax-exempt bonds must notify the IRS if they intend to carry forward the unused limitation for specific projects. The IRS uses the information to complete the required study of tax-exempt bonds (required by Congress).

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 132,200 hours.

*OMB Number:* 1545–1710.

*Type of Review:* Extension.

*Title:* Revenue Procedure 2001–9, Form 940 e-file Program.

*Form:* 4506–T.

*Description:* Revenue Procedure 2001–9 provides guidance and the requirements for participating in the form 940 e-file.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 207,125 hours.

*OMB Number:* 1545–0954.

*Type of Review:* Extension.

*Title:* Return for Nuclear Decommissioning Funds and Certain Related Persons.

*Description:* A nuclear utility files Form 1120–ND to report the income and taxes of a fund set up by the public utility to provide cash for the dismantling of the nuclear power plant. The IRS uses Form 1120–ND to determine if the fund income taxes are correctly computed and if a person related to the fund or the nuclear utility must pay taxes on self-dealing.

*Respondents:* Businesses and other for-profit institutions.

*Estimated Total Burden Hours:* 3,259 hours.

*OMB Number:* 1545–0685.

*Type of Review:* Extension.

*Title:* Export Exemption Certificate.

*Form:* 1363.

*Description:* This form is used by carriers of property by air to justify the tax-free transport of property. It is used by IRS as proof of tax exempt status of each shipment.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 450,000 hours.

*OMB Number:* 1545–1070.

*Type of Review:* Extension.

*Title:* TD 8223, Temporary, Branch Tax; TD 8432, Final and Temporary, Branch Profits Tax; and TD 8657, Final and Temporary, Regulations on Effectively Connected Income and the Branch Profits Tax.

*Description:* The regulations explain how to comply with section 884, which imposes a tax on the earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation to tax.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 12,694 hours.

*OMB Number:* 1545–1338.

*Type of Review:* Extension.

*Title:* PS–103–90 (Final) Election Out of Subchapter K for Producers of Natural Gas.

*Description:* Under section 1.761–2(d)(5)(i), gas producers subject to gas balancing agreements on the regulation's effective date are to file Form 3115 and certain additional information to obtain the Commissioner's consent to a change in method of accounting to either of the two new permissible accounting methods in the regulations.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Burden Hours:* 5 hours.

*Clearance Officer:* Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E7–10866 Filed 6–5–07; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Alcohol and Tobacco Tax and Trade Bureau

### Proposed Information Collections; Comment Request

**AGENCY:** Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

**DATES:** We must receive your written comments on or before August 6, 2007.

**ADDRESSES:** You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please not do include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

**Information Collections Open for Comment**

Currently, we are seeking comments on the following records and questionnaires:

*Title:* Tax Authorization Information.
*OMB Number:* 1513–0001.
*TTB Form Numbers:* 5000.19.
*Abstract:* TTB requires TTB F 5000.19 to be filed when a respondent's representative, not having a power of attorney, wishes to obtain confidential information regarding the respondent. After completion of the form, information can be released to the representative.
*Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.
*Type of Review:* Extension of a currently approved collection.
*Affected Public:* Business or other for-profit.
*Estimated Number of Respondents:* 50.
*Estimated Total Annual Burden Hours:* 50.

*Title:* Referral of Information.
*OMB Number:* 1513–0003.
*TTB Form Numbers:* 5000.21.
*Abstract:* TTB F 5000.21 is used to refer to other Federal, State or local government agencies information on potential violations of requirements under their jurisdiction or as requested. The form is also used to request what action will be taken as a result of the potential violation.
*Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.
*Type of Review:* Extension of a currently approved collection.
*Affected Public:* Federal government; State, Local, or Tribal government.
*Estimated Number of Respondents:* 500.
*Estimated Total Annual Burden Hours:* 500.

*Title:* Offer in Compromise of Liability Incurred under the Provisions of Title 26 U.S.C. Enforced and Administered by the Alcohol and Tobacco Tax and Trade Bureau.
*OMB Number:* 1513–0054.
*TTB Form Numbers:* 5640.1.
*Abstract:* TTB F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted, the offer in compromise is a settlement between the Government and the party in violation, in lieu of legal proceedings or prosecution. TTB F 5640.1 identifies the party making the offer, the violation(s), the amount of offer, and the circumstances concerning the violation(s).
*Current Actions:* There are no changes to this information collection, and it is being submitted for extension purposes only.
*Type of Review:* Extension of a currently approved collection.
*Affected Public:* Business or other for-profit.
*Estimated Number of Respondents:* 40.
*Estimated Total Annual Burden Hours:* 80.

*Title:* Federal Firearms and Ammunition Excise Tax Deposit.
*OMB Number:* 1513–0096.
*TTB Form Number:* 5300.27.
*Abstract:* 26 U.S.C. 4181 imposes a Federal excise tax on the sale of pistols, revolvers, other firearms, shells, and cartridges sold by firearms manufacturers, producers, and importers. 26 U.S.C. 6001, 6301, and 6302 establish the authority for a deposit of excise tax to be made. The information on TTB F 5300.27 identifies the taxpayer and establishes the taxpayer's deposit.
*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.
*Type of Review:* Extension of a currently approved collection.
*Affected Public:* Business or other for-profit; Individuals or households.
*Estimated Number of Respondents:* 317.
*Estimated Total Annual Burden Hours:* 1,052.

Dated: May 30, 2007.

**Francis W. Foote,**

*Director, Regulations and Rulings Division.*

[FR Doc. E7–10882 Filed 6–5–07; 8:45 am]
BILLING CODE 4810–31–P


Federal Register

**Wednesday,**
**June 6, 2007**

## Part II

# Environmental Protection Agency

**40 CFR Parts 51 and 52**

**Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 52

**[EPA–HQ–OAR–2006–0888; FRL–8320–7]**

**RIN 2060–AO02**

## Prevention of Significant Deterioration New Source Review: Refinement of Increment Modeling Procedures

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under the requirements of the Clean Air Act (Act), the New Source Review (NSR) program includes Prevention of Significant Deterioration (PSD) measures, which protect air quality in areas that currently have clean air. For some pollutants, the PSD program protects clean air through a system of ''increments.'' These increments specify the maximum extent to which the ambient concentration of these pollutants may be allowed to increase above the legally defined baseline concentration in an area with clean air. In this rulemaking, we propose to refine several aspects of the method that may be used to calculate an increase in concentration for increment purposes. These refinements are intended to clarify how States and regulated sources may calculate increases in concentrations for the purposes of determining compliance with the PSD increments.

**DATES:** *Comments.* Written comments must be received on or before August 6, 2007.

*Public Hearing.* If anyone contacts EPA requesting to speak at a public hearing by June 26, 2007, we will hold a public hearing approximately 30 days after publication in the **Federal Register**. Additional information about the hearing would be published in a subsequent **Federal Register** notice.

**ADDRESSES:** *Comments.* Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0888, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include 2 copies.
- *Hand Delivery:* EPA Docket Center, (Air Docket), EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions.* Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0888. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket.* All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly-available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jessica Montanez, New Source Review Group, Air Quality Policy Division (C504–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *telephone number:* (919) 541–3407; *fax number:* (919) 541–5509, or *electronic mail e-mail address: montanez.jessica@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

## I. General Information

*A. Does this action apply to me?*

Entities potentially affected by this proposed action include owners and operators of emission sources in all industry groups, as well as the EPA and State, local, and tribal governments that are delegated authority to implement these regulations. The majority of sources potentially affected are expected to be in the following groups:

| Category | NAICS[a] | Industry group |
|---|---|---|
| Industry | 221111, 221112, 221113, 221119, 221121, 221122. | Electric services. |
| | 32411 | Petroleum refining. |
| | 325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188. | Industrial inorganic chemicals. |
| | 32511, 325132, 325192, 325188, 325193, 32512, 325199. | Industrial organic chemicals. |
| | 32552, 32592, 32591, 325182, 32551 | Miscellaneous chemical products. |
| | 211112 | Natural gas liquids. |
| | 48621, 22121 | Natural gas transport. |
| | 32211, 322121, 322122, 32213 | Pulp and paper mills. |
| | 322121, 322122 | Paper mills. |
| | 336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213. | Automobile manufacturing. |
| | 325411, 325412, 325413, 325414 | Pharmaceuticals. |
| Federal government | 924110 | Administration of Air and Water Resources and Solid Waste Management Programs. |
| State/local/tribal Government | 924110 | Administration of Air and Water Resources and Solid Waste Management Programs. |

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. What should I consider as I prepare my comments for EPA?*

1. Submitting Confidential Business Information (CBI)

Do not submit Confidential Business Information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

2. Suggestions for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR (New Source Review) home page located at *http://www.epa.gov/nsr.*

*D. How can I find information about a possible hearing?*

Persons interested in presenting oral testimony should contact Ms. Pam Long, New Source Review Group, Air Quality Policy Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–0641 or e-mail *long.pam@epa.gov* at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also contact Ms. Long to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning this action.

## II. Background

*A. What is the PSD program?*

Part C of title I of the Act contains the requirements for a component of the major NSR program known as the PSD program. This program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the National Ambient Air Quality Standards or ''NAAQS'' (''attainment'' areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment (''unclassifiable'' areas).

The NSR provisions of the Act are a combination of air quality planning and air pollution control technology program requirements for new and modified stationary sources of air

pollution. In brief, section 109 of the Act requires us to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once we have set these standards, States must develop, adopt, and submit to us for approval a State Implementation Plan (SIP) that contains emission limitations and other control measures to attain and maintain the NAAQS and to meet the requirements of section 110(a) of the Act. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to assure that the NAAQS are achieved and maintained; to protect areas of clean air; to protect Air Quality Related Values (including visibility) in certain national parks, wilderness areas, and other natural areas of special concern; to assure that appropriate emissions controls are applied; to maximize opportunities for economic development consistent with the preservation of clean air resources; and to ensure that any decision to increase air pollution is made only after full public consideration of all the consequences of such a decision. Most States have SIP-approved major NSR programs; however there are some States that instead implement the Federal PSD program at 40 CFR 52.21 through delegation.[1]

The applicability of the PSD program to a particular source must be determined in advance of construction and is pollutant specific. Once a source is determined to be subject to PSD, among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) and will not cause or contribute to a violation of any NAAQS or any maximum allowable ambient pollutant concentration increase (increment). In cases where the source's emissions may adversely affect an area classified as Class I, additional review is conducted to protect the increments and special attributes of such an area defined as ''air quality related values'' (AQRVs).

When the reviewing authority reaches a preliminary decision to authorize construction of a proposed new major source or major modification, it must provide notice of the preliminary decision and an opportunity for comment by the general public, industry, and other persons that may be affected by the major source or major modification. After considering and responding to the comments, the reviewing authority may issue a final determination on the construction permit in accordance with the PSD regulations.

*B. What are PSD increment analyses?*

1. Framework for Increment Analyses

Under section 165(a)(3) of the Act, a PSD permit applicant must demonstrate that emissions from the proposed construction and operation of a facility ''will not cause, or contribute to, air pollution in excess of any * * * maximum allowable increase or maximum allowable concentration for any pollutant* * *.'' The ''maximum allowable increase'' of an air pollutant that is allowed to occur above the applicable baseline concentration for that pollutant is known as the PSD increment. The maximum allowable concentration is the ceiling established by adding the PSD increment to the baseline concentration. By establishing the maximum allowable increase in a particular area, an increment defines ''significant deterioration.''

Increments have been established for three pollutants—Sulfur Dioxide ($SO_2$), Particulate Matter (PM), and Nitrogen Dioxide ($NO_2$)—and for a variety of averaging periods, which correspond to the averaging periods for the NAAQS for those pollutants. In addition, all attainment and unclassifiable areas are classified as Class I, Class II, or Class III, and different increment levels apply in each type of area. Class I areas include certain national parks, wilderness areas, and other natural areas of special concern; the smallest increments are specified for these areas. Nearly all other areas in the United States are currently classified as Class II, where higher increments are specified. States and Tribes have the authority to redesignate Class II areas to Class III (with still higher increments) to promote development, but, to date, none have chosen to do so. States and Tribes also may redesignate Class II areas to Class I to provide additional protection; some Tribes have done so. The increments are codified at 40 CFR 51.166(c) and 52.21(c). The current increment values are shown below in Table 1.

TABLE 1. CURRENT INCREMENT VALUES

| Pollutant | Maximum allowable increase (micrograms per cubic meter) |
|---|---|
| **Class I** | |
| Particulate matter: | |
| PM–10, annual arithmetic mean | 4 |
| PM–10, 24-hr. maximum | 8 |
| Sulfur dioxide: | |
| Annual arithmetic mean | 2 |
| 24-hr. maximum | 5 |
| 3-hr. maximum | 25 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 2.5 |
| **Class II** | |
| Particulate matter: | |
| PM–10, annual arithmetic mean | 17 |
| PM–10, 24-hr. maximum | 30 |

[1] Where a State does not have a SIP-approved program and chooses not to accept delegation of the Federal PSD program, EPA implements the PSD requirements as the reviewing authority within that jurisdiction. In addition, we implement the PSD program in Indian country until such time as a Tribe elects to adopt, and we approve, a Tribal Implementation Plan (TIP) that contains a PSD program that meets the requirements of the Act.

TABLE 1. CURRENT INCREMENT VALUES—Continued

| Pollutant | Maximum allowable increase (micrograms per cubic meter) |
|---|---|
| Sulfur dioxide: | |
| Annual arithmetic mean | 20 |
| 24-hr. maximum | 91 |
| 3-hr. maximum | 512 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 25 |
| **Class III** | |
| Particulate matter: | |
| PM–10, annual arithmetic mean | 34 |
| PM–10, 24-hr. maximum | 60 |
| Sulfur dioxide: | |
| Annual arithmetic mean | 40 |
| 24-hr. maximum | 182 |
| 3-hr. maximum | 700 |
| Nitrogen dioxide: | |
| Annual arithmetic mean | 50 |

For PSD baseline purposes, a baseline area for a particular pollutant emitted from a source includes the attainment or unclassifiable area in which the source is located as well as any other attainment or unclassifiable area in which the source's emissions of that pollutant are projected (by air quality modeling) to result in an ambient concentration increase of at least 1 μg/m$^3$ (annual average). *See,* e.g., 40 CFR 52.21(b)(15)(i). Once the baseline area is established, subsequent major sources undergoing PSD review in that area must address the fact that a portion of the available increment may already have been consumed by previous emissions increases.

Three dates related to the PSD baseline concept are important in calculating the amount of increment consumed by pollutant emissions from the major source undergoing PSD review and other applicable emissions increases and decreases in a particular baseline area. In general, the submittal date of the first complete PSD permit application in a particular area is the operative ''baseline date.'' [2] On or before the date of the first complete PSD application, most emissions are considered to be part of the baseline concentration. Most emissions increases that occur after the baseline date will be counted toward the amount of increment consumed. Similarly, emissions decreases after the baseline date expand the amount of increment that is available.

In actuality, there are two baseline dates that are related to the determination of how much increment is being consumed in a particular baseline area. These two dates, described below, are necessary to properly account for the emissions that are to be counted toward increment consumed in accordance with the statutory definition of ''baseline concentration'' in section 169(4) of the Act. The statutory definition provides that the baseline concentration of a pollutant for a particular baseline area is generally the air quality at the time of the first application for a PSD permit in the area. Consequently, any increases in actual emissions occurring after that date (with some possible exceptions that we will discuss later) would be considered to consume the applicable PSD increment. However, the statutory definition also provides that ''[E]missions * * * from any major emitting facility on which construction commenced after January 6, 1975 shall not be included in the baseline and shall be counted in pollutant concentrations established under this part.''

To make this distinction between the date when emissions changes in general (i.e., from both major and minor sources) count in the increment and the date when emissions resulting from the construction at a major stationary source count in the increment, we established the terms ''minor source baseline date'' and ''major source baseline date,'' respectively. *See* 40 CFR 51.166(b)(14) and 52.21(b)(14). Accordingly, the ''minor source baseline date'' is the date on which the first complete application for a PSD permit is filed in a particular area. Any change in actual emissions after that date counts in the PSD increment for that area. The ''major source baseline date'' is thus named because it is the date after which actual emissions associated with construction at a major stationary source affect the available PSD increment. In accordance with the statutory definition of ''baseline concentration,'' the PSD regulations define a fixed date to represent the major source baseline date for each pollutant for which an increment exists. Congress defined the major source baseline date for the statutory increments for PM and $SO_2$ as January 6, 1975. For the $NO_2$ increments, which we promulgated in 1988 under our authority to establish an increment system under section 166(a) of the Act, the major source baseline date was selected as February 8, 1988—the date on which we proposed increments for $NO_2$.

Finally, the PSD regulations set out the third date that is relevant to the PSD baseline concept. These regulations provide that the earliest date on which the minor source baseline date can be established is the date immediately following the ''trigger date'' for the pollutant-specific increment. *See,* e.g., 40 CFR 52.21(b)(14)(ii). For PM and $SO_2$, Congress defined the applicable trigger date as August 7, 1977—the date of the 1977 amendments to the Act

[2] Baseline dates are pollutant specific. That is, a complete PSD application establishes the baseline date only for those regulated NSR pollutants that are projected to be emitted in significant amounts (as defined in the regulations) by the applicant's new source or modification. Thus, an area may have different baseline dates for different pollutants.

when the original statutory increments were established by Congress. For $NO_2$, we selected the trigger date as February 8, 1988—the date on which we proposed increments for $NO_2$. *See* 53 FR 40656, 40658; October 17, 1988.

Under this approach, the baseline concentration is not actually established for a PSD baseline area until after the ''minor source baseline date'' is established by the submission of the first PSD permit application for a source whose emissions would affect a given baseline area. Although major source emissions may consume increment prior to this date, they are not factored into the calculation until the minor source baseline date is triggered.

Once the minor source baseline date associated with the first proposed new major stationary source or major modification in an area is established, the new emissions from that source consume a portion of the increment in that area, as do any subsequent emissions increases that occur from any source in the area. When the maximum pollutant concentration increase defined by the increment has been reached, additional PSD permits cannot be issued until sufficient amounts of the increment are ''freed up'' via emissions reductions that may occur voluntarily, e.g., via source shutdowns, or via control requirements imposed by the reviewing authority. Moreover, the air quality in a region cannot deteriorate to a level in excess of the applicable NAAQS, even if all the increment has not been consumed. Therefore, new or modified sources located in areas where the air pollutant concentration is near the level allowed by the NAAQS may not have full use of the amount of pollutant concentration increase allowed by the increment.

2. General Approach to Increment Analyses

The EPA and the States have generally used an emissions inventory and modeling approach to identify the degree to which an increment has been consumed or will be consumed by major source construction. Ambient monitoring has not been used to establish baseline concentrations or to evaluate increment consumption because ambient measurements reflect emissions from all sources, including those that should be excluded from the measurements. We have not necessarily required the identification of a specific baseline concentration but rather have focused on measuring the change in concentration from the legally established baseline date to the time of the analysis. For example, in the preamble to the 1978 PSD regulation (43 FR 26388, 26400; June 19, 1978), we stated the following:

> The regulations promulgated today no longer suggest that the baseline concentration be formally established. The Administrator feels that increment consumption can be best tracked by tallying changes in emissions levels of sources contributing to the baseline concentration and increases in emissions due to new sources. Data to establish baseline air quality in an absolute sense would be needed only if increment consumption were to be tracked using ambient measurements. Thus, to implement the air quality increment approach, the reviewing authority needs to verify that all changes from baseline emissions rates (decreases or increases as appropriate) in conjunction with the increased emissions associated with approved new source construction will not violate an applicable increment * * *.

This method has made it easier to comply with the statutory provisions (discussed below in section II.D of this preamble) excluding certain increases in emissions at major sources from the baseline concentration and allowing other emissions to be excluded from increment consumption.

Even with that said, we believe that it would also be acceptable and consistent with the Act for a State to use an approach of establishing an actual baseline concentration using an initial baseline emissions inventory. The State could then calculate the consumed increment by revising the inventory to include the relevant emissions increases and decreases as discussed above.

3. Agency Guidance and Specific Approaches Used in Practice

Over time, the Agency developed some recommended approaches that reviewing authorities could use to determine whether changes in emissions rates and increases in emission associated with new construction since the baseline date have or have not increased concentrations above the increments. Our recommendations have generally been described in modeling guidelines and guidance documents, while the PSD regulations in 40 CFR 51.166 and 52.21 contained only a few basic requirements for the increment analysis.

Some of our recommendations for the increment analysis have been included in the ''Guideline on Air Quality Models,'' which is located in appendix W to 40 CFR part 51. Appendix W provides modeling guidelines for sources and reviewing authorities under a variety of Clean Air Act programs. The PSD regulations cite appendix W and state that all PSD air quality modeling should be based on the ''applicable models, data bases, and other requirements'' specified there. *See* 40 CFR 51.166(l) and 52.21(l). Although appendix W is incorporated by reference in the PSD regulations, we have continued to refer to this as a ''guideline'' and used language in the guideline to indicate that it does not mandate specific procedures in all cases. *See,* In re: Prairie State Generating Company, PSD Permit Appeal No. 05–05, slip. op. at 132 (EAB August 24, 2006) (''Appendix W is replete with references to 'recommendations,' 'guidelines,' and reviewing authority discretion.'') It is also important to keep in mind that appendix W provides guidelines for other types of regulatory applications, not just PSD increment analyses. As a result, not all the recommendations included in appendix W are applicable to an analysis of increment consumption under the PSD program. Care must be taken to evaluate whether certain recommendations are appropriate for the particular circumstances of each increment analysis.

We also included some suggestions for the increment analysis in the 1990 draft ''New Source Review Workshop Manual'' (draft NSR Manual).[3] This draft document addressed many aspects of PSD permitting, including the increment analyses. However, we made clear on the very first page that this manual was not intended to establish binding regulatory requirements. Draft NSR Manual at 1 (Preface). In addition, we never finalized the 1990 draft of the NSR Manual and accordingly never intended for the manual itself to establish final EPA policies or interpretations of our NSR regulations. Nevertheless, many people have looked to this document for guidance and have sometimes improperly construed the draft NSR Manual to contain requirements that must be followed.

The EPA's Environmental Appeals Board (''Board'') has sometimes referenced the draft NSR Manual as a reflection of our thinking on certain PSD issues, but the Board has been clear that the draft NSR Manual is not a binding Agency regulation. *See,* In re: Indeck-Elwood, LLC, PSD Permit Appeal No. 03–04, slip. op. at 10 n. 13 (EAB Sept. 27, 2006); In re: Prairie State Generating Company, PSD Permit Appeal No. 05–05, slip. op. at 7 n. 7 (EAB Aug 24, 2006). In these and other cases, the Board also considered briefs filed on behalf of the Office of Air and Radiation that provided more current information on the thinking of the EPA headquarters program office on specific PSD issues

[3] This document is often referred to as the ''Puzzle Book'' due to the depiction of jigsaw puzzle pieces on its cover.

arising in particular cases. Thus, the Board has looked to the draft NSR Manual as one resource to consider in developing Agency positions through case-by-case adjudications, while recognizing that the draft NSR Manual does not itself contain binding requirements.

Other non-binding EPA guidance letters or memoranda that have addressed increment consumption analyses are discussed in more detail below in the context of discussion on specific issues.

Based largely on prior EPA guidance, the approach that has generally been used in States and EPA Regional Offices for increment analyses has involved the following four steps:

1. Determine the 1 μg/m$^3$ ''significant impact area'' for the particular pollutant for which the new major source or major modification is undergoing PSD review. (If the source is subject to an increment analysis for more than one pollutant, each analysis is carried out independently).

2. Identify the other sources in the vicinity of the new or modified source whose emissions affect the significant impact area.

3. Estimate the emissions from those sources that consume increment.

4. Model the change in emissions to get a concentration change, and compare that concentration change to the applicable increment.

The actual increment analysis that a proposed new or modified source undergoing PSD review must complete will depend on the area impacted by the source's new emissions.

We have provided approved air quality models and guidelines for sources to use to project the air quality impact of each pollutant (over each averaging period) for which an increment analysis must be done. In addition, we established significant impact levels for each pollutant under the nonattainment major NSR program that have also been used under the PSD program to identify levels below which the source's modeled impact is regarded as *de minimis*. *See* 40 CFR 51.165(b) and part 51, appendix S, section III.A.[4] In the event that a source's modeled impacts of a particular pollutant are below the applicable significant impact level at all ambient air locations modeled, i.e., *de minimis* everywhere, EPA policy provides that no further modeling analysis is required for that pollutant. Our policy has been that when a preliminary screening analysis based on the significant impact level is sufficient to demonstrate that the source's emissions will not cause or contribute to a violation of the increment, there is no need for a full impacts analysis involving a cumulative evaluation of the emissions from the proposed source and other sources affecting the area.

Within the impact area of a source that does have a significant impact, increment consumption is calculated using the source's proposed emissions increase, along with other emissions increases or decreases of the particular pollutant from other sources that would consume increment and which have occurred since the minor source baseline date established for that area. (For major sources, emissions increases or decreases resulting from construction as defined at 40 CFR 51.166(b)(8) and 40 CFR 52.21(b)(8) that have occurred since the major source baseline date consume or expand increment). Thus, an emissions inventory of sources whose emissions consume or expand the available increment in the area must be compiled. The inventory includes not only sources located directly in the impact area, but sources outside the impact area that affect the air quality within the impact area. Section IV.A.1 of this preamble discusses the types of sources that are to be included in the emissions inventory for increment analyses.

The inventory of emissions includes emissions from increment-affecting sources at two separate time periods—the baseline date and the current period of time. For each source that was in existence on the relevant baseline date (major source or minor source), the inventory includes the source's actual emissions on the baseline date and its current actual emissions. The change in emissions over these time periods represents the emissions that consume increment (or, if emissions have gone down, expand the available increment). For sources constructed since the relevant baseline date, all their current actual emissions consume increment and are included in the inventory.

An emissions inventory must be prepared for each averaging period for which an increment has been specified for the pollutant under review. In many cases, direct emissions data are not available for some or all averaging periods, and actual emissions must be estimated. This can be particularly challenging for existing sources where the baseline emissions must be determined and the baseline date is well in the past. The approach generally used per EPA guidance has been to base the annual emissions inventory on the actual measured emissions or actual hours of operation, fuel usage, raw materials used, etc., while basing the emissions inventory for shorter averaging periods on the maximum emissions over each averaging period as determined from available data (again, emission measurements, operating hours, fuel or materials consumption, etc.).

When the inventory of emissions has been compiled, computer modeling is used to determine the change in ambient concentration that will result from these emissions when combined with the proposed emissions increase from the new major source or major modification that is undergoing PSD review. The modeling has generally been guided by the ''Guideline on Air Quality Models'' (40 CFR part 51, appendix W), which includes provisions on air quality models and the meteorological data input into these models.

Two possible approaches have been used to predict the change in air pollutant concentration using models. One approach is to make a single model run after calculating the difference in emissions from the baseline date to the current period of time. An alternative approach is to make two model runs (one based on an inventory of baseline emissions and the second based on an inventory of current actual emissions) and calculate the difference between them.

The model output (expressed as a change in concentration) for each relevant averaging period is then compared to the corresponding allowable PSD increment. If the model results indicate that the increment(s) will not be exceeded, the reviewing authority may issue a PSD permit to the source. Except as discussed below, if the modeling shows that the source would cause or contribute to a violation of a PSD increment,[5] the reviewing authority

[4] The cited regulations actually apply to sources located in a PSD area, which must demonstrate that they will not cause or contribute to a violation of the NAAQS in an adjacent nonattainment area. This demonstration may be made by showing that the emissions from the PSD source alone are below the significant impact levels set forth in 40 CFR 51.165(b)(2). Based on EPA interpretations and guidance, these significant impact levels have also been widely used in the PSD program to define the extent of the impact area where an increment analysis must be performed. We proposed to codify these significant impact levels for use in the PSD program in 1996 as part of a comprehensive proposal to revise the major NSR regulations. *See* 61 FR 38250, 38325, July 23, 1996. We have not yet taken final action on this proposal.

[5] The proposed source is deemed to ''cause or contribute to'' an increment violation if the modeling shows that the impact attributable to the

Continued

may not issue the permit. The source may revise its permit application to reduce its proposed emissions, or it may mitigate the impact of its emissions through obtaining offsetting emission reductions from other sources in the emissions inventory.

If the modeling shows only an increment violation in a Class I area, the source has the opportunity to apply for a ''variance'' from the Federal Land Manager (FLM) that has responsibility for that Class I area. If the source successfully demonstrates to the FLM that emissions from the source will not have an adverse effect on the AQRVs of the Class I area, and to the reviewing authority that the emissions will not violate a set of higher increment levels specified in the Act (generally equal to the Class II increments), the reviewing authority may issue a PSD permit to the source. The source may further appeal to the Governor and the President in certain situations. These variances are discussed in greater detail in section IV.A.2 of this preamble.

*C. Why do we need to refine the method for analyzing increment consumption?*

We have never adopted detailed regulations establishing a specific methodology that sources and reviewing authorities must use to calculate an increase in concentrations for purposes of determining compliance with the PSD increments. Instead, increment analyses have been conducted by States and EPA Regional Offices based on the guidelines and guidance discussed in the previous section. In the absence of definitive requirements, sources and reviewing authorities have attempted to apply the available guidance to a wide range of situations. Differing interpretations and approaches have resulted, along with controversy over how binding the guidelines and guidance are on reviewing authorities and who (EPA or the reviewing authorities) has the ultimate discretion to determine which approaches are reasonable for a specific increment analysis. With this proposal, we intend to provide greater clarity on several issues.

One push for greater clarity has come from the Western States Air Resources Council (WESTAR) PSD Reform Workgroup, with participants from Western States, the U.S. National Park Service, U.S. Fish and Wildlife Service, U.S. Forest Service, and the U.S. Bureau of Land Management and consultation by EPA. The workgroup was formed in early 2004 to develop recommendations to improve the effectiveness of the PSD program. The goal of the WESTAR effort was to propose changes to the PSD program that would result in a more practical program, significantly reducing constraints in the current program that they viewed as limiting State and local agencies' abilities to address cumulative incremental consumption and Class I AQRV analysis and protection, some of which were identified in a letter to EPA.[6] While the purpose of today's notice is focused on refining increment analysis procedures, we are considering broader changes to the program as a separate rulemaking to address additional concerns that WESTAR and others have raised.[7]

A major point raised by WESTAR is that States need to consult early and often in order to agree in advance on modeling protocols to enable consistency between the States in performing the analyses and to ensure equity in application of the analysis. WESTAR further recommended that we take steps to ensure that EPA Regional Offices, in partnership with States and FLMs, operate consistently among themselves in inter-jurisdictional contexts and develop data and methods that will better enable inter-jurisdictional analysis. WESTAR stressed that a balance is needed between providing States with case-by-case, cross-jurisdictional PSD increment analysis flexibility and providing the national or regional standardization necessary to ensure equity among States, simplify cross-jurisdictional analysis, and facilitate coordination with FLMs. The WESTAR report also noted a lack of clarity and sometimes narrow interpretations of the definition of actual emissions used for purposes of calculating point source emissions for inclusion in emissions inventories for PSD analyses. All of the WESTAR workgroup representatives agreed that it is desirable to bring greater clarity and consistency to approaches for conducting refined analyses, particularly related to approaches for calculating point source emissions. Today's notice is a step toward achieving that balance between case-by-case flexibility and inter-jurisdictional consistency.

*D. What are the Clean Air Act requirements related to increments?*

The PSD increments are established under sections 163 and 166 of the Act. In section 163 of the Act, Congress adopted specific numerical increments for particulate matter and sulfur dioxide in each of the three classes of PSD baseline areas (i.e., Class I, II, and III, as described above in section II.B.1). In 1990, Congress created section 166(f) of the Act which authorized us to substitute increments based on the $PM_{10}$ indicator for the original particulate matter increments contained in section 163. Consistent with this provision, we substituted $PM_{10}$ increments for the increments based on total suspended particulate matter in a 1993 rulemaking (58 FR 51622, June 3, 1993). In section 166(a) of the Act, Congress directed and authorized EPA to promulgate additional increments for nitrogen oxides and other pollutants. We promulgated increments for $NO_2$ in 1988 and reaffirmed those increments in a 2005 rulemaking (53 FR 40656, Oct. 17, 1988; 70 FR 59582, Oct. 12, 2005).

The Act does not directly specify how to determine an increase in concentrations for purposes of determining compliance with the PSD increments. Section 163(b) of the Act provides that ''the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over baseline concentration of such pollutants shall not exceed'' specified amounts for each pollutant. *See* CAA sections 163(b)(1)–(3). The Act does not define an ''increase in concentrations'' for purposes of section 163. Likewise, section 165(a)(3) prohibits permitting a source that causes or contributes to ''air pollution in excess of any maximum allowable increase or maximum allowable concentrations,'' but does not specify how EPA is to determine that air pollution would exceed the allowable increase or concentration. Section 166 of the Act directs EPA to promulgate pollutant-specific PSD regulations which contain ''specific numerical measures against which permit applications may be evaluated'' and indicates that such measures ''may contain air quality increments.'' *See* CAA sections 166(a), (c), (d). However, there is no further guidance in section 166 concerning the method to be used to measure an increase in air pollutant concentrations for purposes of evaluation against the PSD increments.

We have found some guidance in the Act in the definition of ''baseline concentration,'' which we interpret to support our view that an increase in concentration for increment purposes

source at the time and place of the violation is greater than the relevant significant impact level.

[6] ''Recommendations for Improving the Prevention of Significant Deterioration Program.'' Stuart A. Clark, President, Western States Air Resources Council, May 19, 2005.

[7] In addition to WESTAR's recommendations, we received comments from the Northeast States for Coordinated Air Use Management (NESCAUM) on the WESTAR recommendations in a letter and attachment from Arthur N. Marin, Executive Director of NESCAUM, October 18, 2005.

should be determined on the basis of actual emissions. Section 169(4) of the Act defines ''baseline concentration'' as ''the ambient concentration levels which exist at the time of the permit application.'' The opinion of the United States Court of Appeals for the District of Columbia Circuit in *Alabama Power* v. *Costle* interpreted section 169(4) in a manner that supports establishing the PSD baseline concentration using actual emissions. 636 F.2d 323, 375–381 (D.C. Cir. 1980). Since emissions that consume increment are not included in the baseline, we have long recognized that an increase in concentration (the consumption of increment) is directly related to baseline concentration (45 FR 52676, 52718, Aug. 7, 1980). In light of these considerations, we reached the following conclusion:

> Since the Alabama Power decision and the statute both provide that actual air quality be used to determine baseline concentrations, but provide no guidance on increment consumption calculations, EPA has concluded that the most reasonable approach, consistent with the statute, is to use actual source emissions, to the extent possible, to calculate increment consumption or expansion.

*See* 45 FR 52676, 52718 (Aug. 7, 1980). We expressly incorporated the definition of ''actual emissions'' into the regulatory definition of ''baseline concentration'' (40 CFR 51.166(b)(13) and 52.21(b)(13)). In this definition of ''baseline concentration,'' the term ''actual emissions'' is referenced both in the provision describing how to determine the baseline concentration and in the provision identifying emissions that affect the maximum allowable increases (the increment). *See,* e.g., 40 CFR 51.166(b)(13)(ii). The term ''actual emissions'' is itself defined in 40 CFR 51.166(b)(21) and 52.21(b)(21).

The Act also provides some direction concerning the increment consumption analysis by identifying particular sources whose emissions are counted against the maximum allowable increases and listing categories of sources whose emissions may be excluded from the increment consumption analysis. In the statutory definition of ''baseline concentration,'' section 169(4) of the Act specifies that ''[e]missions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.'' This provision makes clear that emissions of these pollutants from new or modified major sources that commence construction between 1975 and the baseline date for a given area shall be counted against the increments and thus are considered to ''consume'' increment. In addition, section 163(c) authorizes States to exclude certain pollution concentrations from the increment consumption analysis. This provision authorizes States to ''promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutants shall not be taken into account.'' The concentrations identified are those attributable to (1) fuel switches required under other laws (15 U.S.C. 792 or 16 U.S.C. 791a); (2) construction or other temporary emission-related activities; and (3) new sources outside the United States. The PSD regulations reflect these provisions of sections 163(c) and 169(4) of the Act.

The existing PSD regulations reflect these specific requirements of the Act. As discussed earlier, we implemented the last sentence of section 169(4) by establishing two separate baseline dates—the major source baseline date and the minor source baseline date. *See* 40 CFR 51.166(b)(14) and 52.21(b)(14). We implemented section 163(c) of the Act by promulgating 40 CFR 51.166(f), which is discussed further below.

Within the boundaries described above, we read the Act to provide EPA with fairly broad discretion to establish regulations concerning the approach to be used to measure an increase in concentration for purposes of assessing consumption of PSD increments. Since the Act does not define ''increase in concentration'' for increment purposes, we interpret the Act to grant EPA discretion to develop a method for measuring this increase, so long as that method is reasonable and consistent with the limited requirements described above. The absence of specific direction in the Act concerning how to calculate an increase in concentration for increment purposes is similar to the gap in the Act concerning how to calculate an increase in emissions for purposes of identifying a major modification. With respect to the latter issue, the DC Circuit has recently observed that ''In enacting the NSR program, Congress did not specify how to calculate 'increases' in emission, leaving EPA to fill that gap while balancing the economic and environmental goals of the statute.'' *New York* v. *EPA*, 413 F.3d 3, 27 (Jan. 25, 2005). We believe Congress intended a similar result with respect to ''increases'' in concentration under the increment provisions of the PSD side of the NSR program. As observed by the court in *Alabama Power*, ''Congress expected EPA to use 'administrative good sense' in establishing the baseline and calculating exceedances.'' *See Alabama Power*, 636 F.2d at 380. In this rulemaking, we propose to exercise our rulemaking discretion on this topic and provide additional guidance to States and regulated sources on how to calculate increases in concentrations for purposes of determining compliance with the PSD increments.

## III. Summary of This Proposed Action

This action proposes clarifications in eight areas related to increment analyses. They are summarized below:

- Effect of the 1990 draft ''New Source Review Workshop Manual.'' Discussed in detail in section IV; no regulatory revisions.
- Treatment of sources that have previously received a Class I area FLM variance in subsequent increment consumption modeling. Discussed in detail in section V.A; regulatory revisions in 40 CFR 51.166(f)(2) and 52.21(f)(2).
- Data used to estimate emissions. Discussed in detail in section V.B.1; regulatory revisions in 40 CFR 51.166(f)(1) and 52.21(f)(1).
- Time period of emissions used to model pollutant concentrations. Discussed in detail in section V.B.2; regulatory revisions in 40 CFR 51.166(f)(1) and 52.21(f)(1).
- Actual emissions rates used to model short-term increment compliance. Discussed in detail in section V.B.3; regulatory revisions in 40 CFR 51.166(f)(1) and 52.21(f)(1).
- Meteorological data and processing. Discussed in detail in section V.C.1; no regulatory revisions.
- Years of meteorological data. Discussed in detail in section V.C.2; no regulatory revisions.
- Documentation and data and software availability. Discussed in detail in section V.D; no regulatory revisions.

## IV. Proposed Clarifications Regarding the Effect of the Draft New Source Review Workshop Manual

To avoid future misunderstandings concerning the effect of the draft 1990 New Source Review Workshop Manual (draft NSR Manual), we propose in this action to make clear that the draft NSR Manual is not a binding regulation and does not by itself establish final EPA policy or authoritative interpretations of EPA regulations under the New Source Review Program. As discussed above, because this document was never finalized, we never intended for the manual to establish final agency policy

or authoritative interpretations of EPA's NSR regulations. Furthermore, in many areas the positions reflected in the document have become outdated and superseded by statutory amendments, rulemakings, additional guidance memoranda, and adjudications by the Administrator and the EPA Environmental Appeals Board.

Notwithstanding this proposed clarification concerning the effect of the draft NSR Manual, we recognize that some of the views expressed in the draft NSR Manual may have been promulgated in EPA regulations or adopted by the Agency as final policy statements or interpretations in other actions taken before or after the release of the draft NSR Manual in 1990. On some topics, the draft NSR Manual compiled pre-existing EPA policy and interpretations, but on other matters the document expressed proposed policies or interpretations that were never finalized by the Agency. To the extent EPA subsequently or previously adopted a view expressed in the draft NSR Manual through other action that was clearly final, those positions may have achieved the status of final policies or interpretations, but positions that are only expressed in the draft NSR Manual should not be considered to be a final EPA policy or interpretation.

With respect to the increment analysis that is the subject of this rulemaking action, we are proposing to establish regulations that supersede many of the recommended approaches for conducting the increments analysis set forth in the draft NSR Manual and other EPA guidance documents, as discussed in more detail below. However, we are not proposing in this action to supersede or change specific policies or interpretations not discussed in this notice that EPA may have adopted in final form prior to or after the development of the draft NSR Manual.

With respect to the draft NSR Manual as a whole, we are only proposing to clarify that the 1990 draft of the NSR Manual does not by itself establish final policies or interpretations of the EPA. To the extent such policies or interpretations are reflected in other action or documents that were issued in a final form (such as rulemakings, guidance memorandum, or adjudications by the Administrator or the Environmental Appeals Board), EPA will continue to follow them unless the Agency has otherwise indicated that it no longer adheres to such policies or interpretations. For example, it remains EPA's policy to use the five-step, top-down process to satisfy the Best Available Control Technology (''BACT'') requirements when PSD permits are issued by EPA and delegated permitting authorities, and we continue to interpret the BACT requirement in the Clean Air Act and EPA regulations to be satisfied when BACT is established using this process, as it has been described in decisions of the Environmental Appeals Board. However, notwithstanding this policy and the interpretations of the BACT requirement reflected in EPA adjudications, EPA has not established the top-down BACT process as a binding requirement through regulation.

We request comment on this proposal to clarify that the draft NSR Manual is not a binding regulation and does not independently reflect or establish a final statement of EPA policy or an authoritative interpretation of EPA regulations.

## V. Proposed Refinements to Increment Modeling Procedures

### *A. What kind of emissions consume or expand the PSD increment?*

1. What types of sources are included in increment consumption modeling?

In defining ''baseline concentration,'' the PSD regulations also spell out the emissions sources that must be included in an increment analysis. Specifically, in 40 CFR 51.166(b)(13)(ii) and 52.21(b)(13)(ii), the regulations indicate that the following emissions are not included in the baseline concentration, but instead affect the available increment:

- Actual emissions from any major stationary source on which construction commenced after the major source baseline date.
- Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

Thus, the sources that affect available increment, and therefore must be included in an increment analysis are: (1) Major sources that have increased or decreased actual emissions after the major source baseline date as a result of construction of a new source, a physical or operational change to an existing source, or shutdown of an existing source; and (2) any source that has had an increase or decrease in actual emissions since the minor source baseline date. The latter includes major sources, minor sources, and area sources that have been constructed since the minor source baseline date (i.e., new sources) or have experienced a change in actual emissions since the minor source baseline date (i.e., existing sources that have been modified or have changed their capacity utilization or hours of operation).

For many years, we have interpreted the PSD regulations to require increases and decreases in mobile source emissions to be included in the increment consumption analysis. *See,* e.g., 53 FR 40656, 40662 (October 17, 1988). However, we understand that many States have not consistently accounted for mobile source emissions in their increment analyses. To make clear that mobile source emissions need to be included in an analysis of increment consumption, we are proposing to amend the reference to ''any stationary source'' in 40 CFR 51.166(b)(13)(ii)(*b*) and 52.21(b)(13)(ii)(*b*) of our regulations to make explicit that actual emissions increases or decreases that consume or expand increment are not limited solely to stationary source emissions.

Despite prior inconsistencies, EPA has generally not second-guessed state increment assessments after they are completed or PSD permits have been issued. Thus, to the extent a state has neglected to account for mobile source emissions in prior increment analysis, EPA does not intend for this technical amendment to require those states to revisit those increment assessments or previously-issued permits. These states should simply include mobile source emissions in their next permit review or periodic review of increment consumption and factor those results into future permitting decisions or planning strategies.

The existing regulations also specify that ''secondary emissions'' are to be included in an increment analysis. *See* 40 CFR 51.166(k) and 52.21(k). Secondary emissions are defined as emissions which occur as a result of the construction or operation of a major source or modification, but do not come from the major source itself. They include emissions from any offsite support facility which would not be constructed or increase emissions except as a result of the construction of the major source or modification that is undergoing PSD review. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the major source or modification that is under review. *See* 40 CFR 51.166(b)(18) and 52.21(b)(18).

We have also codified an exemption to these general principles in 40 CFR 51.166(f) of the PSD regulations. This provision authorizes SIPs to exclude from increment consumption those sources in the four categories listed in section 163(c) of the Act. The regulations also allow States to exclude concentrations attributable to temporary increases in emissions from sources affected by SIP revisions approved by

EPA. *See* 40 CFR 51.166(f)(1)(v). When we promulgated increments for $NO_2$, 40 CFR 51.166(f) became applicable to the increments for that pollutant as well. Thus, emissions attributable to sources or actions listed in 40 CFR 51.166(f) may not consume increment if a State has promulgated regulations approved by EPA that exclude such emissions from the increment consumption analysis. We have not included a companion provision in 40 CFR 52.21 because we read section 163(c) of the Act to apply only to States with approved PSD programs in their State implementation plans.

2. How is a source with a Class I area Federal Land Manager variance treated in subsequent increment consumption modeling?

We propose to add a category of sources that may be excluded from the increment consumption analysis in a specialized circumstance described in the Clean Air Act. We propose to establish that sources that have been permitted based in part on a variance issued by a Federal Land Manager (FLM) for a Class I area may be excluded from the increment consumption analysis for the Class I increment in the area for which the variance was issued.

*Background.* Under section 165(d) of the Act, when a proposed source subject to permitting has the potential to adversely impact a Class I area, an additional review is required to assess whether the source will adversely impact Air Quality Related Values (AQRVs) in the Class I area. The AQRV review provisions of section 165(d) provide another layer of protection against significant deterioration in Class I areas on top of the protection provided by increments.[8] Although any area may be designated to be a Class I area, such areas are generally national parks and wilderness areas of a certain size that are required to be Class I areas under the Act. *See* section 162(a) of the Act.

The Act does not define AQRVs or identify specific AQRVs other than visibility. *See* section 165(d)(2)(B) of the Act. However, AQRVs are generally understood to encompass the purposes for which lands have been preserved, to the extent those purposes may be affected by air quality. In legislative history to the Act, AQRVs are described as follows:

> The term ''air quality related values'' of Federal lands designated as class I includes the fundamental purposes for which such lands have been established and preserved by the Congress and the responsible Federal agency. For example, under the 1916 Organic Act to establish the National Park Service (16 U.S.C. 1), the purpose of such national park lands ''is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.''

*See* S. Rep. 95–127 at 36, reprinted at 3 LH at 1410. In 1996, we proposed to adopt the following definition of AQRV:

> Air quality related values means visibility or a scenic, cultural, physical, biological, ecological, or recreational resource that may be affected by a change in air quality, as defined by the Federal Land Manager for Federal lands, or by the applicable State or Indian Governing Body for nonfederal lands.

*See* 61 FR 38250, 38332, July 23, 1996. We have not yet taken final action to adopt this definition.

The Act provides that the FLM charged with responsibility for managing a Class I area has an ''affirmative responsibility'' to protect the AQRVs in the area. *See* section 165(d)(2)(B) of the Act. Section 165(d) establishes a procedure under which the FLM may object to or concur in the issuance of a PSD permit based on the impact, or lack thereof, that new emissions may have on any affected AQRV that the FLM has identified. If the proposed source's emissions do not cause or contribute to a violation of a Class I increment (satisfying the requirement in section 165(a)(3) of the Act), the FLM may nevertheless prevent issuance of the permit by demonstrating to the satisfaction of the reviewing authority that the source or modification will have an adverse impact on AQRVs. *See* section 165(d)(2)(C)(ii) of the Act. Conversely, if the proposed source will cause or contribute to a violation of a Class I increment, the reviewing authority may not issue the permit unless the owner or operator demonstrates to the satisfaction of the FLM that the emissions from the proposed facility will have no adverse impact on the AQRVs of the Class I area. *See* section 165(d)(2)(C)(iii) of the Act. Under this procedure, the compliance status of the increment determines whether the FLM or the permit applicant has the burden of satisfactorily demonstrating whether or not the proposed source's emissions would have an adverse impact on AQRVs.[9] The FLM has the burden of demonstrating an adverse impact when the Class I increment is not exceeded. However, if the proposed source causes or contributes to a violation of the Class I increment, the permit applicant must convince the FLM to certify that the proposed source will not have an adverse impact on AQRVs.

This certification by the FLM is known as a ''variance'' under 40 CFR 51.166(p) and 52.21(p) of the PSD regulations. The process for issuance of a variance was originally applied only in the context of the statutory increments for PM and $SO_2$ based on section 165(d) of the Act, but we have, by rulemaking, extended the AQRV review procedures set forth in §§ 51.166(p) and 52.21(p) to cover $NO_2$. *See* 70 FR 59583, October 12, 2005; 53 FR 40656, October 17, 1988.

In the case of the 24-hour and 3-hour increments for $SO_2$, the Act provides an additional process through which the permit applicant may request that the Governor of a State issue a variance or appeal to the President to issue the variance if the FLM does not concur with the Governor's conclusion. *See* section 165(d)(2)(D) of the Act. If the FLM does not initially issue a variance under section 165(d)(2)(C), the Governor may issue a variance subject to the concurrence of the FLM, if the Governor finds, after public notice and hearing, that a facility cannot be constructed because of a short-term increment for $SO_2$ and that the variance will not adversely affect AQRVs. *See* section 165(d)(2)(D)(i) of the Act; 40 CFR 51.166(p)(5) and 52.21(p)(6). If the FLM does not concur with the Governor's decision to issue the variance, the dispute is submitted to the President for resolution. The President may grant the variance if he finds that a variance is in the national interest. *See* section 165(d)(2)(D)(ii) of the Act; 40 CFR 51.166(p)(6) and 52.21(p)(7).

Under both of these variance provisions, the variance cannot issue unless the permit contains emissions limitations sufficient to prevent violations of alternative increments that are established for the specific permitting action due to the variance. In the case of an FLM variance issued under section 165(d)(2)(C), the alternative increments are equal to the Class II increments in most instances. In the unique case of the 3-hour increment for $SO_2$, the Act requires use of an increment of 325 $\mu g/m^3$ (a level between the Class I and Class II increments) for $SO_2$ for the 3-hour averaging period. *See* section 165(d)(2)(C)(iv) of the Act; 40

[8] ''A second test of protection is provided in specified Federal land areas (Class I areas), such as national parks and wilderness areas; these areas are also subjected to a review process based on the effect of pollution on the area's air quality related values.'' S. Rep. 95–127, at 17, 4 LH at 1401.

[9] ''The class I increment is a test for determining where the burden of proof lies and is an index of changes in air quality. It is not the final determinant for approval or disapproval of a permit application.'' S. Rep. 95–127 at 35.

CFR 51.166(p)(4) and 52.21(p)(5). We also applied this approach to $NO_2$ by adding a cap of 25 $\mu g/m^3$ (equal to the $NO_2$ Class II increment) to the regulations. *See* 53 FR 3704; *see* 40 CFR 51.166(p)(4) and 52.21(p)(5). Although the short-term Class II increments may ordinarily be violated one time per year, the Act suggests that when the Class II increment applies under the Class I variance provisions in section 165(d)(2)(C), no violations of the Class II increment are permissible. *See* section 163(a) of the Act.

In the case of a gubernatorial or presidential variance for the short term $SO_2$ increments, the Act establishes another set of alternative increments at a level between the Class I and Class II increments for the 24-hour and 3-hour averaging periods. *See* section 165(d)(2)(D)(iii) of the Act. This provision includes separate alternative increments for permitting actions receiving a variance in low and high terrain areas. *Id.* In addition to requiring emissions limitations sufficient to assure these alternative increments are not exceeded, this portion of the Act also specifies that the permit must ''assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period.'' *Id.* We interpret the ''otherwise applicable maximum allowable increases'' to describe the Class I increments and thus understand this provision to allow 18 exceedances of the Class I increment per year after a variance has been issued under section 165(d)(2)(D).

In contrast to section 165(d)(2)(D)(iii), the FLM variance provisions in section 165(d)(C)(iv) that refers primarily to the Class II increments does not discuss an ''otherwise applicable maximum allowable increase'' or identify an allowable number of days on which such an increment might be exceeded. This omission leaves some ambiguity concerning whether the Class I increment should continue to apply in the Class I area for which a variance has been issued by the FLM under section 165(d)(2)(C) based upon a certification that the emissions from a proposed facility will not have an adverse impact on AQRVs. Since Congress has not directly spoken to this issue, we propose to add provisions to the PSD regulations to clarify how a reviewing authority should account for these variances when evaluating compliance with the Class I increment when a source has previously been issued a variance.

*Proposed Action.* To address this issue, we propose to add a new provision in 40 CFR 51.166(f) stating that the emissions of any source that were permitted after receiving a Class I increment variance from an FLM need not be included in the consumption analysis for the Class I increment for the area for which the variance was issued under section 165(d)(2)(C) of the Act. However, we propose that the emissions of such source continue to be accounted for in the analysis of compliance with the alternative Class II increments that are applied in the Class I area after the issuance of a variance. As noted above, in the case of $SO_2$, the alternative increment is not the Class II increment but a level between the Class I and Class II increments.

We interpret section 165(d)(2)(C) of the Act to allow this additional exclusion, not contained in section 163(c) of the Act, from the increment consumption analysis for emissions that an FLM has considered and certified to not have an adverse impact on AQRVs. However, this is a narrow exclusion that applies only with respect to the Class I increment in those areas for which a variance has been issued. We do not read section 165(d)(2)(C) to authorize such emissions to be excluded from an analysis of compliance with the Class II increments (or the alternative 3-hour $SO_2$ increment).

In Class I areas, the key criterion for determining whether a permit may issue is the effect of a project on AQRVs. The Class I increment is important, but the terms of sections 165(d)(2)(C)(ii) and 165(d)(2)(C)(iii) make clear that AQRVs actually control whether a permit should be issued or not. As discussed above, the increment determines who has the burden of demonstrating the degree of impact on AQRVs, but ultimately the degree of impact on AQRVs is the controlling standard in such areas. Exceedances of the increment are allowed so long as the source can demonstrate to the satisfaction of the FLM that a source will not have an adverse impact on AQRVs. An exceedance of Class I increment creates a presumption that AQRVs within the affected impact area will also be adversely affected, but that presumption may be rebutted. Likewise, the absence of an increment exceedance creates a presumption that there is no adverse impact on AQRVs within the affected impact area, but that presumption may also be rebutted if the FLM provides evidence sufficient to convince the reviewing authority that emissions from a proposed source will have an adverse impact on AQRVs. Thus, based on the interplay of sections 165(d)(2)(C)(ii) and 165(d)(2)(C)(iii), we interpret the Act to establish AQRVs, rather than the Class I increment, as the controlling standard in Class I areas. AQRVs are always applicable in Class I areas, regardless of the status of the Class I increment.

However, AQRVs are the controlling benchmark only to the extent that AQRVs provide more protection than the Class II increments (or a lower figure in the case of the 3-hour averaging time for $SO_2$). Section 165(d)(2)(C)(iv) indicates that, although a permit may be issued where AQRVs are not adversely impacted, such permit must ensure that the Class II increments are not exceeded. We interpret this provision to mean that the Class II increment cannot ever be exceeded in a Class I area, notwithstanding the degree of impact on AQRVs. So, reading sections 165(d)(2)(C)(ii)-(iv) together, we interpret the Act to establish AQRVs and the Class II increments to be the air quality standards that ultimately determine whether a permit may be issued for a source potentially affecting a Class I area. The Class I increment serves to establish a presumption of harm or the absence of harm to AQRVs, but does not ultimately control whether a permit may be issued.

While it is clear that AQRVs and the Class II increments ultimately control whether a particular permit may be issued, the Act does not specify what role the Class I increment has to play on an ongoing basis after a variance has been issued. To obtain a variance, the applicant must rebut the presumption that AQRVs will be adversely impacted by an increase in concentrations in excess of the Class I increment. Once that presumption has been rebutted for a particular area, the Class I increment may no longer be representative of the degree of impact on AQRVs for that area. If the Class I increment has been exceeded but there is no adverse impact on AQRVs, this indicates that the Class I increment is not a reliable predictor of adverse impacts on AQRVs in a particular area.

Thus, the question arises as to whether the Class I increment should remain applicable in a Class I area after the issuance of a variance. Section 165(d)(2)(C) does not address this issue. Although section 165(d)(2)(D)(iii) says that the ''otherwise applicable'' increment may not be exceeded more than 18 days per year in the case of a gubernatorial or presidential variance, section 165(d)(2)(C)(iv) does not refer to any ''otherwise applicable'' increment in the context of an FLM variance. The other parts of section 165(d)(2)(C) also fail to address this issue.

One approach we have considered is to construe the silence in section 165(d)(2)(C) as an indication that Congress did not intend to permit violations of the Class I increment for any additional days beyond the one day per year allowed in the case of the 24-hour and 3-hour increments. Under this interpretation, a variance under section 165(d)(2)(C) would be considered only to be a variance from the ''cause or contribute'' standard in section 165(a)(3) of the Act for purposes of an individual permit application. An applicant would be relieved of the obligation to demonstrate that a proposed source does not cause or contribute to a violation of the Class I increment if the applicant can demonstrate that the source will not adversely affect AQRVs. However, under this view, the variance would not necessarily relieve the reviewing authority or State air quality planning agency from the obligation to ensure that the SIP contains measures to protect the Class I increment. The source might receive its permit based on the variance from section 165(a)(3) for a particular Class I area, but the State would remain obligated to comply with 40 CFR 51.166(a)(3) of the PSD regulations and take subsequent action to amend the SIP to correct the exceedance of the Class I increment caused by the source that received the variance.

The latter interpretation appears to be supported by a statement from the DC Circuit's opinion in *Alabama Power* v. *Costle*. In this decision, the Court upheld the language cited above (40 CFR 51.166(a)(3)) that requires a State to revise its SIP to correct a violation of the increment.[10] Some of the Petitioners in that case had argued that EPA could not require a State to remedy a Class I increment violation, because section 165(d) allowed a waiver of the Class I increment in certain circumstances. The court reconciled the variance provision and the language in § 51.166(a)(3) as follows:

> Industry petitioners also rely on those sections of the Act that provide for waiver provisions which, conceivably, could allow increments to be exceeded. The waiver has vitality and recognition in that facilities granted special consideration under these provisions are, in effect, treated as facilities operating in compliance with the provisions of the Act. But the totality of facilities in compliance, as a group, may be subject to measures necessary to cope with a condition of pollutants exceeding the PSD maximum.

*See* 636 F.2d at 363.

[10] At the time of that decision, this language was contained in § 51.24(a)(3) of EPA's regulations. *See* 636 F.2d at 361 n. 92.

We have previously acknowledged that this may be a permissible way to reconcile the FLM variance provision with the requirement in § 51.166(a)(3) to amend SIPs to remedy an increment exceedance. In correspondence sent to the State of North Dakota, the Director of EPA's Office of Air Quality Planning and Standards recommended the approach suggested by the *Alabama Power* opinion. The letter stated the following:

> In the case of a Class I increment violation, a source may be granted a variance under certain conditions. First, the source must demonstrate to the FLM, and the FLM certify to the State, that the source will not adversely impact any Class I AQRVs. Second, the State must revise its SIP to correct increment violations ([Act] Section 161 and 163, 40 CFR 51.166(a)(3)).

*See* Letter from John Seitz, EPA/OAQPS, to Francis Schwindt, North Dakota Dept. of Health (December 12, 2001). EPA Region 8 followed this recommendation in comments submitted to North Dakota in 2002. *See* EPA Comments on North Dakota Department of Health's Proposed Determination Regarding the Adequacy of the SIP to Protect PSD Increments for Sulfur Dioxide (May 24, 2002).

Since the time of these recommendations, we have evaluated this issue further and now recognize that there may be more than one permissible reading of the Act on this issue. The approach that we suggested in 2001 (amending the SIP to eliminate the Class I increment exceedance after the permit issues) would effectively require the source seeking the variance to obtain offsets from other sources affecting the Class I increment. If section 165(d)(2)(C) is read to require that a variance source obtain offsets, there would be no need for that proposed source to demonstrate that its emissions would not have an adverse impact on AQRVs. This would render the AQRV provisions in section 165(d)(2)(C) of the Act meaningless where the increment is exceeded because one would not need to consider AQRVs and obtain the variance in the first place if offsetting emissions reductions were obtained. Furthermore, where a single source consumes the entire increment but does not adversely impact AQRVs, the issuance of a variance would have no effect because a SIP could not be tightened to obtain reductions from any other source to remedy the increment exceedance. In this circumstance the State would have no choice but to tighten or revoke the permit of the variance source immediately after the permit was issued. We do not believe Congress intended such a result. In light of these considerations, we are proposing to refine our interpretation of section 165(d)(2)(C) with respect to the role of the Class I increment after a variance has been issued under section 165(d)(2)(C).

Another possible approach would be to read section 165(d)(2)(C)(iv) to call for the Class II increments to substitute for the Class I increment on an ongoing basis after a variance is issued. We might construe the absence of any discussion of an ''otherwise applicable'' increment in this section of the Act to mean that Congress did not intend for the Class I increment to have continuing effect in the area after the variance was issued. Since Congress did not specify the number of days on which the ''otherwise applicable'' increment could be exceeded per year (as it did in section 165(d)(2)(D)(iii)), one interpretation is that this information was not needed because Congress did not intend for the Class I increments to apply after it was demonstrated that the Class I increment was not a reliable predictor of the degree of impact on AQRVs in a particular Class I area. Under this approach, the Class II increments (plus the unique 3-hour $SO_2$ increment) would continue to provide an upper bound on emissions growth to protect the Class I area while AQRVs remained in effect to protect against site-specific impacts that are not adequately represented by the Class I increment. However, under this Class II increment substitution approach, the Class I increment would no longer be available as a tool to determine who has the burden of proof to demonstrate the degree of impact on AQRVs.

In this action, we are proposing a compromise approach that retains the Class I increment for the purpose of establishing the burden of proof in the AQRV analysis but does not require a SIP to be amended to offset the contribution of sources that have received a variance because they do not adversely affect AQRVs. We propose to accomplish this effect by allowing States to exclude the emissions from sources receiving an FLM variance from the Class I increment consumption calculation. The emissions of the variance source must continue to be considered for purposes of determining compliance with the Class II increments, but they would no longer be considered relevant to the Class I increment assessment after a variance has been issued. The Class I increment would remain in effect with respect to the emissions of other sources, and could not be exceeded on any additional days. The emissions of sources that have

not received a variance would continue to count against the Class I increment.

For example, assume that an impact area for a proposed new source contains four sources that currently consume the $SO_2$ increment for the 3-hour averaging period—two of which have FLM variances and two of which do not. There are no other increment consuming or expanding sources in the impact area. For the 3-hour averaging period for $SO_2$, the Class I increment is 25 μg/m³ and the alternative increment that applies after issuance of an FLM variance in this area is 325 μg/m³.[11] Assume that the two sources with variances consume 4 μg/m³ each, for a total of 8 μg/m³. Assume that the two sources without variances consume 10 μg/m³ each, for a total of 20 μg/m³. Under this scenario, if a new source applies for a permit, under this proposed rule the new source must combine its emissions with the emissions from the other two sources without variances and not exceed, for the Class I area of impact, 25 μg/m³. Thus, the new source can consume up to 5 μg/m³ (i.e., 25 μg/m³ minus 20 μg/m³) of the available Class I increment for $SO_2$ without assuming the burden of obtaining a third variance by demonstrating to the FLM that the source will not have an adverse impact on AQRVs in the Class I area.

Under this hypothetical example, because two sources in the area have previously obtained variances and shown that the Class I increment is not necessarily a reliable indicator of impacts on AQRVs, an alternative increment of 325 μg/m³ now applies in the Class I area for all sources. The proposed source must combine its emissions with that of all 4 sources and not exceed a concentration increase of 325 μg/m³. Since the other four sources consume 28 μg/m³, the new source can consume up to 297 μg/m³ (i.e., 325 μg/m³ minus 28 μg/m³) of the available increment for $SO_2$.[12]

Furthermore, the AQRV test remains applicable to the ultimate decision as to whether the permit may be issued for the new source. Even though the new source, combined with the two existing sources without variances, may not cause or contribute to an exceedance of the Class I increment, the permit could nevertheless be denied if the FLM convinces the reviewing authority that the new source will have an adverse impact on AQRVs in the affected Class I area.

Since a variance will not be issued unless the Class I area FLM certifies that the emissions from a proposed source will not have an adverse impact on AQRVs, it is reasonable to omit the emission of such source from the increment consumption analysis for the Class I increment on an ongoing basis. A source issued a variance does not adversely impact AQRVs, which as discussed above, is the critical and adaptable test Congress established for protecting site-specific concerns in Class I areas. Each successive source that impacts the Class I area would still have to show that it does not harm the AQRVs to receive a permit. The Class I increment would remain relevant as an indicator for assessing when other sources may have an adverse impact on AQRVs. If sources other than the variance source cause an exceedance of the Class I increment, the next source to apply for a permit affecting the area will have the burden of demonstrating to the FLM that the proposed source's emissions do not adversely affect AQRVs. If the emissions of the proposed source and other sources that have not received a variance do not consume the Class I increment, then the FLM will bear the burden of convincing the reviewing authority that the proposed source will adversely impact AQRVs. Plus, the alternative increments (generally the Class II increments) apply to limit the overall increase in concentrations caused by all sources affecting the Class I area.

This approach is a permissible reading of the Clean Air Act that reconciles some apparent inconsistencies in the statutory scheme. Even when a variance is issued under section 165(d)(2)(C), the Act does not expressly allow the Class I increment to be exceeded on any additional days. If this omission were read strictly to preclude any additional days of violation of the increment, this would be inconsistent with allowing a variance because the strict reading would preclude any additional days of a Class I increment violation, even those caused by a variance source. The issuance of a variance would appear to require at least a temporary variance from the Class I increment, even if the SIP still has to be amended at a later date to correct the violation, but that would be inconsistent with a strict reading of section 165(d)(2)(C)(iv) to preclude additional violations of the Class I increment. If section 165(d)(2)(C)(iv) is read to require that the Class II increment permanently supersede the Class I increment, an unlimited number of additional days of Class I increment violations would be permitted and the burden shifting effect of the Class I increment would be lost. Our proposed approach of excluding the emissions of variance sources from the Class I analysis appears to be the best way to avoid authorizing any additional days of Class I increment violations while retaining the role of the Class I increment as a tool to determine who has the burden in the AQRV analysis.

Because of the differences between section 165(d)(2)(C) and 165(d)(2)(D), we do not propose to apply this same exclusion to variances issued under section 165(d)(2)(D). Instead of allowing an exclusion from the Class I increment consumption analysis, it appears that Congress opted in section 165(d)(2)(D) to apply the otherwise applicable Class I increment and instead to allow that increment to be exceeded on 18 days per year instead of the normal limit of 1 day per year.

We also propose to use this rule as an opportunity to correct a typographical error in the provisions of our rules addressing the FLM variances. The cross references contained within 40 CFR. 51.166(p) and 52.21(p) incorrectly refer to paragraph (q) of these provisions. We propose to amend these provisions so they reflect the correct cross-references to portions of paragraph (p).

*B. How are emissions estimated for sources that consume increment?*

To model the expected change in concentration of pollutants above the baseline, one needs to identify the emissions of those sources that are included in the increment consumption analysis. As noted earlier, the PSD regulations call for this analysis to be based on the actual emissions of sources. The baseline concentration is generally based on ''actual emissions * * * representative of sources in existence on the applicable minor source baseline date.'' *See* 40 CFR 51.166(b)(13)(i)(*a*) and 52.21(b)(13)(i)(*a*). The concentration after the minor source baseline date is generally based on ''actual emissions increases and decreases * * * at any stationary source occurring after the minor source baseline date.'' *See* 40 CFR 51.166(b)(13)(i)(*b*) and 52.21(b)(13)(ii)(*b*). There are certain exceptions to these general principles for emissions of major sources, but the basic methodology involves identifying the actual emissions of sources on the minor baseline date and actual emissions increases and decreases after

[11] As previously noted, the 3-hour averaging period for $SO_2$ is unique in that the Act specifies an increment for purposes of the FLM variance (325 μg/m³) that is different from the corresponding Class II increment (512 μg/m³).

[12] The increment consumption estimates for all existing sources are based on modeling of their actual emissions, while the consumption estimate for the new source is based on modeling of its potential to emit (PTE).

the minor source baseline date at sources existing on the minor source baseline date and increases attributable to the addition of new sources since that time.

In practice, an assessment of increment consumption in accordance with these requirements has generally involved compiling an actual emissions inventory for two separate time periods. The first part of the inventory generally contains actual emissions as of the minor source baseline. However, for major sources that experienced changes in emissions resulting from construction (as defined at 40 CFR 51.166(b)(8) and 40 CFR 52.21(b)(8)) after the major source baseline date, the emissions as of the major source baseline date would be used. The second part of the inventory contains actual emissions as of the time of a periodic review of increment compliance or the review of a pending PSD permit. In the case of a PSD permit review, the second part of the inventory contains the projected emissions of the proposed source. The existing PSD regulations contain a definition of the term ''actual emissions'' in 40 CFR 51.166(b)(21) and 52.21(b)(21). This definition is expressly incorporated into the definition of ''baseline concentration'' which establishes the basic parameters described above for determining the change in concentration since the baseline date.

In this action, we are proposing to adopt a revised definition of ''actual emissions'' that will address the methodology for quantifying emissions as of the baseline date and emissions that consume increment. Rather than revising the existing definition of actual emissions in 40 CFR 51.166(b)(21) and 52.21(b)(21) which may continue to be used for other purposes under the PSD program, we propose to promulgate a new definition of ''actual emissions'' in 40 CFR 51.166(f) and 52.21(f) that will apply only to the analysis of increment consumption and be easier to find among other provisions pertaining to the increment consumption analysis. We also request comment on whether we could also repeal the existing definition of actual emissions in 40 CFR 51.166(b)(21) and 52.21(b)(21) without affecting other elements of the PSD program.

1. Data and Calculation Methods Used to Establish Actual Emissions

We propose to add language to the PSD regulations to clarify that a reviewing authority has discretion to use its best professional judgment when determining the actual emissions of sources as of the baseline date and at subsequent periods of time, particularly where there is limited data available from which to determine actual emissions. We propose to establish a general standard for the sufficiency of data and calculation methods on which actual emissions may be based, but also request comment on WESTAR's recommendation that EPA establish a menu of permissible data types and calculation methods from which each reviewing authority may select.

*Background.* Because direct measurement of the emissions from a stack may not be available, the emissions of baseline and increment consuming sources must often be derived from other data that is available. The current regulations applicable to increment consumption analyses specify that ''actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.'' *See* 40 CFR 51.166(b)(21) and 52.21(b)(21). This general requirement adopted in the PSD regulations in 1980 presumed the availability of reliable and consistent records on operating hours, production rates, and materials composition.

However, the experience of EPA and many States in implementing the PSD program since this time has shown that the accuracy and reliability of the available data may be questionable or may vary significantly over the time period of the emissions estimate. For PSD baseline dates that are many years in the past, information on actual source operations may be sketchy or lacking altogether. Furthermore, the composition of raw materials, such as the sulfur content of coal, may change over time and might be reliably estimated for an annual average value, but may be significantly higher during a shorter period of time within that year or when a maximum value is determined.

There may also be cause to choose among various calculation methodologies for a given emissions estimate. For example, annual emission rates could be calculated based on continuous operation (24 hours per day, 365 days per year). If a source does not operate continuously, whether by design or permit limitation, the annual emissions could be based on the limitation. Due to scheduled shutdowns and maintenance, sources rarely operate at design or permit limits, and in such cases actual operating hours could be used. However, there will be situations when data on operating hours are not available and some other estimate of operation must be determined. The choice of which data to use in a particular circumstance, particularly where there is more than one set of data that could be used or more than one methodology, has generated substantial uncertainty in the context of the PSD program. This uncertainty also extends to how gaps in the data are handled, such as when data are unavailable or are available for only a subset of a group of similar sources.

Other than the language quoted above from the definition of ''actual emissions'' calling for emissions to be calculated based on actual operating hours, production rates, and materials composition, the PSD regulations have not included any criteria for reviewing authorities to use to determine actual emissions. We have provided more specific guidance for demonstrations of compliance with the NAAQS under the PSD program in table 8–2 of appendix W, but this table was not developed for purposes of increment consumption analysis. Section 8.1.2.i. currently recommends only that ''NAAQS compliance demonstrations in a PSD analysis should follow the emission input data shown in Table 8–2.'' We do not believe our recommendations in Table 8–2 can be readily extended to increment consumption analyses because of differences in the increment consumption analysis. Unlike the NAAQS analysis, increment consumption assessments have generally focused on changes in emissions, rather than absolute concentrations, and often must account for emissions that occurred many years earlier on the applicable baseline date.

We do not necessarily read the Act to call for the same degree of precision in the increment consumption analysis as a determination of compliance with the NAAQS. Under the constraints imposed by Congress, the increment analysis is in many ways an artificial assessment because the actual emissions as of the date of the first PSD permit application in an area must be adjusted. This adjustment accounts for emissions increases resulting from construction (as defined at 40 CFR 51.166(b)(8) and 40 CFR 52.21(b)(8)) at major sources in the area that occurred prior to that date. CAA section 169(4). In addition, the actual emissions of some sources may be omitted from the analysis altogether under section 163(c) of the Act. Because Congress required or permitted these adjustments to the calculation of baseline concentrations and concentrations after the baseline date, we believe the method used to determine increment consumption should endeavor to provide a representative indication of the relative magnitude by which air quality

concentrations have changed over time, but is not necessarily required to provide an exact prediction of the change in air quality concentrations from one date to another.

*Proposed Action.* To address the uncertainty in how to determine actual emissions for increment consumption purposes, we propose to codify a policy that gives the reviewing authority discretion to select the data and emissions calculation methodologies that are reliable, consistent, and representative of actual emissions. The cornerstone of such a policy is that emissions estimates used to establish baseline concentrations and increment consumption or expansion must be supported by the available record and be rationally-based. This policy would give reviewing authorities the discretion to use the best available information and to make reasonable judgments as to the reliability of that information for determining actual emissions, particularly when estimating emissions for baseline dates in distant years for which very little useful data may be available. In addition, this policy would seek to ensure a reliable estimate of the change in air quality concentrations by encouraging reviewing authorities to evaluate the degree of change by comparing consistent data types or concentration predictions (i.e., to conduct an ''apples'' to ''apples'' comparison of the change in emissions or concentrations). We believe that this flexible approach is preferable to a rigid requirement to use a specific type of data or calculation method because of uncertainty over the exact type and quality of data that will be available in each instance.

This policy is consistent with existing recommendations in appendix W and EPA guidance. Section 8.0.a. of appendix W currently states that ''[t]he most appropriate data available should always be selected for use in modeling analyses.'' This approach is consistently applied throughout appendix W wherein the reviewing authority is given discretion to approve the selection of input data for air quality models.

We have generally given reviewing authorities substantial leeway within the PSD program to select data and emissions calculation methodologies that they believe are representative of actual emissions. We recognize that where the available data are poor, substantial judgment must be used to estimate actual emissions. Once the reviewing authority has selected data and emissions calculation methodologies according to general guidelines, we typically have not second-guessed their choices. In particular, we have not required reviewing authorities to select data or methodologies that we might consider ''more reasonable'' or ''more representative'' than those they have chosen.

We propose to give each reviewing authority the responsibility to verify and approve the data used, and to assure that it meets a basic standard of reliability, consistency, and representativeness. In light of the fact that many recommendations in section 8.0 of appendix W are not necessarily applicable to the increment analysis, we propose to make clear that this standard will control over the recommendations in appendix W.

We request comment on this policy, and on the regulatory language proposed at 40 CFR 51.166(f)(1)(iv) and 52.21(f)(1)(iv) to codify this policy. In addition, we request comment on whether additional guidance or limitations should be articulated and codified for estimating emissions that make up the baseline concentration or consume increment.

*Request for comment on WESTAR recommendation.* In its May 2005 recommendations, WESTAR expressed the view that EPA should ''afford reviewing authorities some flexibility to ensure that analyses accommodate considerations such as data availability and accuracy.'' However, WESTAR also asked us ''to encourage consistency, predictability, and regulatory certainty with regard to approaches for preparing emissions inventories for refined PSD analyses.''

In order to achieve these goals, WESTAR recommended a two-step approach. The first step would be for EPA to develop a ''menu'' of acceptable emissions calculation approaches for both short-term and annual PSD analyses. The second step would allow the reviewing authority to select what they believed to be the most appropriate option from the menu based on a set of guiding principles. The reviewing authority would be able to use calculation approaches not included in the menu provided that they can demonstrate that the approach is consistent with the Act and NSR regulations, as well as the principles included in step two. According to WESTAR's report, this two-step approach would help alleviate the current lack of clarity and narrow interpretations of the definition of actual emissions used for emissions inventories in PSD analyses.

WESTAR's report identifies various types of data that might be used in the menu. These data types are discussed in more detail below in the context of the more specific issue of short-term emissions estimates.

WESTAR also provided guiding principles that could be used in selecting among the menu items. These principles are the following:

- Maximize the accuracy of the method(s) in reflecting the actual status of air quality during each time period associated with applicable standards;
- Conform to the Act, Federal PSD rules, and other applicable laws and rules;
- Ensure consistency between emissions calculation methods used for sources in the baseline emissions inventory and the current emissions inventory;
- Ensure that selected methods are practical given the availability of reviewing authority access to the emissions data;
- Support fairness and consistency in how emissions are calculated for various source types across and within States; and
- Support key air quality management objectives that States and EPA are seeking to achieve, such as encouraging sources' use of continuous emissions monitoring systems (CEMS) and discouraging sources from seeking more permitted air quality increment than they need.

We request comment on WESTAR's proposed approach. For more information, we encourage you to review the WESTAR recommendations that can be found in the docket for this rulemaking. We also request comment on any other aspect of selecting data and calculation methodologies for emissions inventories for PSD analyses.

2. Time Period of Emissions Used To Model Pollutant Concentrations

In this action, we are also proposing amendments to clarify the time periods to be used for emissions from sources included in the calculation of the baseline concentration and the change in concentration after the baseline date. In general, we have called for the modeling change in concentration to be based on the emissions rates from increment consuming sources over the 2 years immediately preceding a particular date. However, there are circumstances when another period of time may be more representative of actual emissions as of a particular date. This rulemaking is intended to clarify those circumstances when it is permissible to use another period of time to represent actual emissions as of a particular date for purposes of calculating the change in concentration used to evaluate consumption of PSD increments.

*Background.* Since source operations are inherently variable over time, the NSR regulations do not require that ''actual emissions'' on a particular date be based only on the emissions occurring on that single date. Instead, the regulations generally require that the baseline concentration be based on an average of the emissions observed over the 2 years prior to the baseline date (40 CFR 51.166(b)(21)(ii) and 52.21(b)(21)(ii)). However, we have long recognized an exception to this general rule, which provides that a different period of time may be used when another period of time is more representative of normal source operations (40 CFR 51.166(b)(21)(ii) and 52.21(b)(21)(ii)).

The original definition of ''actual emissions'' was used in several different ways under the NSR program. In addition to being incorporated in the definition of ''baseline concentration'' and thus used for purposes of determining consumption of increment, this definition of ''actual emissions'' has also been applied for the purpose of identifying the change in emissions attributable to the modification of a major source. An existing major source is subject to NSR if it engages in a major modification which is defined to mean ''any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase * * * and a significant net emissions increase of that pollutant from the major stationary source.'' *See* 40 CFR 51.166(b)(2) and 52.21(b)(2). Prior to 2002, the definition of ''actual emissions'' in 40 CFR 51.166(b)(21) and 52.21(b)(21) applied to determine the actual emissions of the source prior to the change and after the change.

In 2002, we adopted a new definition of ''baseline actual emissions'' that is now used to determine actual emissions before a change for purposes of determining whether a source is proposing a major modification that requires a preconstruction permit. This definition allows non-utility units to identify pre-change emissions using any 2-year period in the 10 years preceding and requires electric utilities to use any consecutive 2 years in the last 5 years. We adopted this new definition to reflect the emissions levels that occur during a normal business cycle, without requiring sources to demonstrate to the reviewing authority that another period is more representative of normal source operation. *See* 67 FR 80191–92. However, in that rulemaking, we made clear that original ''actual emissions'' definition continues to apply for other purposes under the PSD program. We observed that the existing definition of actual emissions ''continues to be appropriate under the pre-existing regulation and for other NSR purposes, such as determining a source's ambient impact against the PSD increments, and we continue to require its use for such purposes.'' *See* 67 FR 80192, footnote 13; 67 FR 80196.

Prior to 2002, when determining the baseline actual emissions at a source experiencing a modification that might trigger NSR, we applied the ''more representative of normal source operations'' exception in 40 CFR 51.666(b)(21) and 52.21(b)(21) in a narrow set of circumstances. For example, in 1999, the Administrator addressed this issue in response to a petition to object to issuance of a title V operating permit and observed that EPA ''has applied its discretion narrowly in assigning representative periods other than the 2 years immediately preceding the physical or operational change.'' *See* Order Responding to Petitioner's Request That Administrator Object to Issuance of State Operating Permit, In the Matter of Monroe Electric Generating Plant Entergy Louisiana, Petition No. 6–99–2. In a draft 1990 guidance document, the agency observed that normal source operations ''may be affected by strikes, retooling, major industrial accidents, and other catastrophic occurrences.'' NSR Workshop Manual at A.39. Based on these examples, we have sometimes looked for evidence of a ''catastrophic occurrence'' before permitting an alternative period to be used to establish the actual emissions of a source prior to a modification. For example, in a 1992 memorandum, the Director of the Air Quality Management Division (AQMD) concluded that the exception should not be invoked for a source that had been idle for 10 years due to economic reasons and had not demonstrated that operations of the plant were disrupted by catastrophic occurrences or other extraordinary circumstances. The director identified strikes and major industrial accidents as examples of catastrophic occurrences. Memo from John Calcagni, AQMD, to David Kee, Region V (August 11, 1992). Although we have, in our discretion, applied the definition in 40 CFR 51.166(b)(21) and 52.21(b)(21) narrowly, we did not amend these regulations to restrict application of the ''normal source operation'' exception in the definition of ''actual emissions'' to only catastrophic occurrences. In recent years, we have moved away from this approach in rulemaking actions.

In the process of establishing the new definition of ''baseline actual emissions'' for applicability purposes, we observed that the more representative or normal source operation provision ''has been a source of confusion and uneven implementation.'' *See* 61 FR 38259, July 23, 1996. This observation was based on our experience with identifying increases in emissions for purposes of determining whether a source was proposing to undergo a major modification and required a permit. We were not concerned at that time about the application of this exception in the context of the PSD increment analysis. However, we have since discovered that the legacy of implementing the ''normal source operation'' exception in the context of NSR applicability has had a collateral effect of fostering confusion in those circumstances, such as PSD increment analyses, where the ''actual emissions'' definition in 40 CFR 51.166(b)(21) and 52.21(b)(21) continues to apply. Recently, the question has arisen as to whether the guidance we provided on the ''more representative of normal source operations'' exception in the applicability context should also be applied in the context of increment consumption analysis. As a result of this question, we have been reviewing the issue, and propose to clarify our position in this rulemaking.

*Proposed Action.* In this action, we are proposing to establish a new definition of ''actual emissions'' (applicable only to the increment consumption analysis) which clarifies the circumstances when it is permissible, in the context of an increment consumption analysis, to determine actual emissions for increment consuming sources using a period of time other than the 2 years immediately preceding the relevant date. We propose to codify this element of the new definition in 40 CFR 51.166(f)(1)(iv) and 52.21(f)(1)(iv) of the PSD regulations.

This issue has arisen most recently in the context of determining the actual emissions of sources as of the baseline date. However, we recognize that this issue could also arise when seeking to establish the ''present day'' inventory of emissions increases or decreases after the baseline date. Under existing regulations, the same definition of actual emissions applies in each instance. Our proposed definition of ''actual emissions'' for the increment consumption analysis is intended to apply to both sides of the ledger in order to provide consistency. We believe the same principles should apply when determining emissions as of the baseline date and the present day.

The proposed revisions are intended to address three primary issues. First, we propose to clarify that one is not required to demonstrate the occurrence of a catastrophic event in order to determine actual emissions on the basis of a period other than the 2 years immediately preceding the date in question. Second, we seek to clarify that there can be circumstances where emissions increases occurring after the baseline date or due to increases in hours of operation or capacity utilization may be more representative of normal source operation. Third, we are clarifying that when an alternative (more representative) time period other than the 2 years before the particular date is used to reflect actual emissions, that alternative time period must be representative of source emissions (within an expected range of variability) *as of* the particular date and cannot be based on emissions experienced because of a change in the normal operations of that source *after* that date.

With respect to the first issue (whether a ''catastrophic occurrence'' must be shown), we have historically approached the ''normal source operation'' exception differently in the context of the PSD increment analysis. The guidance in which we have looked for evidence of ''catastrophic occurrences'' only addressed the subject of baseline actual emissions prior to a modification and did not discuss how to determine the emissions of sources on the PSD baseline date for increment purposes. As discussed further below, in the context of the PSD baseline concentration, we have not previously limited the application of the ''normal source operation'' exception to those circumstances where a source experienced a malfunction or catastrophic event. In the context of increments, we have recognized that the ''normal source operation'' exception may apply in other kinds of circumstances where it can be shown that source emissions in the 24 months preceding the baseline date are not representative of its normal operations at the time of the baseline date.

We do not believe it is appropriate to define ''actual emissions'' as narrowly in the context of PSD increment consumption analysis as it had been applied in the context of PSD applicability determinations before 2002. Although we have looked for evidence of ''catastrophic occurrences'' to establish that another time period is more representative of actual emissions prior to a modification, we do not believe this fact alone justifies using a similar approach for identifying representative periods of actual emissions in the context of a PSD increment analysis. The modification context in which this approach was once used is different from the increment consumption context. The former involves the initial determination of whether a PSD permit is required, and evaluates only an increase in emissions from a single source resulting from a proposed change. By contrast, an increment compliance assessment is performed after it is clearly established that a source must obtain a PSD permit (or may be done in a periodic review when no permit is pending) and evaluates a change in air pollutant concentration using modeling and emissions data inputs for multiple sources. We believe the differing nature of the increments analysis justifies a different approach.

As to the second issue described above, our proposal to sometimes allow emissions after the baseline date to be used to calculate the baseline concentration is consistent with our historic interpretation of the ''normal source operation'' exception in the context of the increment consumption analysis. In our original PSD regulations after the 1977 Amendments to the Act, we considered emissions increases attributable to increases in hours of operation or capacity utilization to be a part of the baseline concentration (rather than increment consuming increases) if the source was allowed to operate at that level in 1977 and could have reasonably been expected to make those increases at the time. *See* 43 FR 26400, June 19, 1978. However, in 1980, we eliminated the automatic inclusion of these emissions in the baseline concentration. Instead, we chose to address the issue on a case-by-case basis when it could be demonstrated that emissions attributable to increased utilization were more representative of normal source operation under the definition of ''actual emissions.'' When we adopted this change, we said that ''if a source can demonstrate that its operation after the baseline date is more representative of normal source operation than its operation preceding the baseline date, the definition of actual emissions allows the reviewing authority to use the more representative period to calculate the source's actual emissions contribution to the baseline concentration.'' *See* 45 FR 52714, Aug. 7, 1980. We continue to view this to be an appropriate policy and propose regulatory language to make this explicit in the regulations.

Identifying ''actual emissions'' based on representative emissions as of the PSD baseline date is consistent with the opinion of the D.C. Circuit in the *Alabama Power* case. In that decision, the court noted the following:

> Congress did not intend a simple measurement of air quality on a day with atypical conditions to control calculation of the baseline. Reasonable efforts to ascertain the actual but usual concentration levels, as of the date of the first applicable for a permit, are required.

*See Alabama Power,* 636 F.2d at 380 n. 44. We believe that the proposed definition of ''actual emissions'' for increment consumption purposes is consistent with Congressional intent, as described by the court. It is reasonable to allow a showing that a period other than the 24 months prior to the baseline date are representative of the ''usual'' concentration levels at the time of the baseline date where emissions after the baseline date can be shown to represent the ''usual'' or ''normal'' concentration levels. As observed by the court in *Alabama Power,* ''Congress expected EPA to use 'administrative good sense' in establishing the baseline and calculating exceedances.'' *See Alabama Power,* 636 F.2d at 380. We have considered this approach to make good sense since 1980. Although emissions after a baseline date may sometimes be reflected in the baseline concentration, this has historically been a narrow exception because, in general, increases in emissions that occur after the baseline date consume increment. *See* 40 CFR 51.166(b)(13) and 52.21(b)(13); *see* also draft NSR Manual at C.35 and C.48.

With respect to the third issue listed above, while we propose to clarify that emissions after the baseline date may sometimes be used to represent actual emissions as of the baseline date, we must also emphasize that this is permissible only in limited circumstances. We propose to include language in our new definition that limits the circumstances under which post-baseline date emissions can be considered representative of normal source operations for purposes of establishing the baseline concentration. Such a limitation is needed to ensure that the increment system continues to function as intended to prevent significant deterioration from actual increases in emissions after the baseline concentration is established. We seek to ensure that real increases in emissions that are outside of a normal range of variability will continue to be regarded as consuming increment, while recognizing that due to the normal variability in source operations, some apparent increases in emissions are justifiably included in the baseline where they are representative of the emissions experienced by a source as of

the baseline date. We believe that increases in emissions that are not attributable to the normal variability of source operations at a particular time are actual increases that should be counted as consuming the available increment.

Under the Act and applicable case law, it is clear that the emissions that make up the baseline concentration must be representative of air pollutant concentration levels at the time of the baseline date. Section 169(4) of the Act defines baseline concentration as the ''ambient air concentration levels which exist at the time of the first application for a permit.'' In the *Alabama Power* decision, the court observed that the baseline concentration is tied to first permit application because Congress intended permitting authorities to use actual data to establish baseline or make permit applicants collect data at the appropriate time. *See* 636 F.2d at 375–76. In defining baseline concentration, we have required a baseline concentration to be based on ''actual emissions * * * representative of sources in existence on the applicable minor source baseline date.'' *See* 40 CFR 51.166(b)(13)(i)(*a*).

Our proposed approach should not be construed to allow emissions estimates as of the baseline date to be based on operations over the entire life of a source or a period of operations that is not representative of operations as of a particular date. Actual emissions as of a particular date must be representative of normal operations (which include an expected range of variability) during the applicable time period. For example, when estimating sulfur dioxide emissions from a coal-fired electric generating unit, we do not believe it is appropriate to use the weighted average sulfur content for coal from any period over the life of the mine supplying the facility. However, we recognize that there may be some variability in the sulfur content of the coal used by a source at the time a baseline date is established. For example, if the baseline date were some time in the 1970s, we believe it would be appropriate for the emissions from this source to be based on a weighted average sulfur content for coal used by the source in the 1970s. However, we would not consider it appropriate for the source to use a weighted average of sulfur content from coal used in the 1990s to represent the composition of coal combusted in the 1970s, unless it can be shown that the composition of coal used in the 1990s is in fact representative of the coal the source actually used in the 1970s. Our intent is to revise the regulation to codify the approach reflected in our Memorandum of Understanding with North Dakota which calls for using the sulfur content of coal consumed during a unit's baseline normal source operations, rather than the sulfur content averaged over the entire life of a mine or any period of operations in the life of the source that is not representative of operations on a particular date.

This approach is consistent with language in the existing definition of ''actual emissions,'' which provides that ''[a]ctual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.'' *See* 40 CFR 51.166(b)(21)(ii) and 52.21(b)(21)(ii). The selected time period under this provision should be either the 24 months before the particular date or an alternative period that is shown to be more representative.

In order to ensure consistent measurement of increases in air pollutant concentration, we believe it is also appropriate to also apply the ''normal source operation'' exception in the context of the emissions inventory for the present day period. As applied to the present day inventory of emissions, if a source experiences lower than normal emissions in the 2 years preceding the review, more representative emissions should also be used in the present day inventory to avoid undercounting actual emissions increases.

Thus, we propose to revise the regulatory language to allow actual emissions used in an increment consumption analysis to be computed based on the operations of a source during a time other than the 24 months preceding a particular date upon a determination that such period is more representative of normal source operation as of the particular date if a credible demonstration can be made that the unit's operations in the 24 months preceding the date were not typical of operations as of the particular date. A period after the particular date may be used, but only if such period is more representative of normal source operations as of the particular date. Operations occurring prior to a particular date would not be considered representative of normal source operations for a particular date if they permanently ceased more than 24 months prior to that date. Under the proposed regulation, the alternative time period that is used to compute actual emissions must be another consecutive 24-month period unless two non-consecutive 12-month periods are demonstrated to be more representative of normal source operation under the criteria in the regulation.

3. Actual Emissions Rates Used to Model Short-Term Increment Compliance

We also propose in this rule to clarify how one should derive source emissions rates of less than 1 year for sources contributing to the baseline concentration and increment consumption when evaluating compliance with the short-term (24-hour and 3-hour) increments for PM and $SO_2$. Increments for a 24-hour averaging time are currently in place for both PM and $SO_2$. The 3-hour averaging time is only used for the $SO_2$ increments. Based on recent experience and the recommendations of WESTAR, we believe that we need to provide additional guidance to States and regulated entities concerning how to determine actual emissions for purposes of modeling the concentration changes over the 3-hour and 24-hour averaging times.

*Background.* The definition of actual emissions in 40 CFR 51.166(b)(21) and 52.21(b)(21) does not directly address how one is to determine actual emissions when modeling pollutant concentrations averaged over periods less than 1 full year. Under the current provision, actual emissions are identified using an annual average in tons per year. However, this section does not directly address how to determine actual emissions over shorter time periods, such as the 24-hour or 3-hour averaging times that are used for some of the PSD increments.

In draft guidance prepared in 1990, we recommended that sources and reviewing authorities use the ''maximum actual emissions rate'' for short-term averaging periods. *See* draft NSR Manual at C.49. We indicated that ''the maximum rate is the highest occurrence for that averaging period during the previous two years of operation.'' *Id.* We recommended using this maximum rate for both the current and the baseline time periods. *Id.* This was consistent with guidance that had been provided by at least one EPA Regional Office as far back as 1981. *See* Memorandum from Thomas W. Devine, Region IV, to State and Local Air Directors, ''Policy Determinations Regarding PSD Questions'' (July 31, 1981).

In practice, however, we have since come to recognize that there is often not sufficient data available to determine the maximum short-term emissions rate over a 2-year period. This type of determination will typically require CEMS. For PSD baseline dates

established in the 1970s and 1980s, these data are especially difficult to find. As a result of this difficulty, some States and EPA Regional Offices have allowed calculation of an average short-term rate using an average rate calculated from annual emissions in situations where short-term maximum actual emissions data are not available.

*Proposed Action.* We propose to promulgate a new definition of ''actual emissions'' applicable to the PSD increment analysis that specifically addresses how to derive short-term emissions rates when modeling the change in concentration for the 24-hour and 3-hour averaging periods used in increments for some pollutants. We propose to add a provision that allows permitting authorities to use their discretion to use data that promotes consistency in the analysis and does not bias the analysis in favor of one group of sources over another. Under this approach, an average short-term rate may be used if the reviewing authority finds this to be the best way to promote consistency and avoid bias. Maximum short-term rates may continue to be used where sufficient data are available, but need not be used in all circumstances. Although we have historically called for use of maximum short-term rates, some stakeholders have suggested that the modeled change in concentration may be overly conservative when increment consumption modeling is based on maximum emissions rates from all sources that consume increment. We understand it may not be reasonable to expect that increment-consuming sources will all be operating at their maximum short-term emissions rates at exactly the same time. If we were to require the use of maximum emissions rates in all instances, this would mandate that PSD modeling always be conducted using a scenario that is not necessarily representative of actual emissions or concentrations. As the court said in *Alabama Power,* EPA should use ''reasonable efforts to ascertain the actual but usual concentration levels'' and ''administrative good sense in establishing the baseline and calculating exceedances.'' *See* Alabama Power, 636 F.2d at 380, 380 n.44. Since it may be unusual for all increment consuming sources to all be operating at their maximum emissions rates at the same time, we believe that ''administrative good sense'' dictates that we permit average emissions rates to be used as well. However, we are not proposing to preclude use of a maximum rate where a reviewing authority or source wishes to conduct a more conservative screening analysis or considers a maximum rate more appropriate under the circumstances for all sources or just for certain sources in the inventory. In many cases, combining the average emissions rates of all increment consuming sources in an emissions inventory may produce a more representative picture of the degree of change in short-term pollution concentration over time.

A more representative indication of the change in emissions is produced by using a consistent set of data. If actual short-term emissions rate or hourly operations data are only available from some sources in an inventory, the analysis could be biased by mixing these data with averages calculated from annual operational data. However, if the reviewing authority derives short-term emissions rates by averaging annual data from all sources in the inventory, this may provide a representative depiction of the change in emissions over time. Likewise, if reliable and consistent maximum or short-term rate data are available for all sources in the inventory, this could provide a representative assessment of the change in maximum rates over time. We are proposing to establish a standard that allows sources to select a consistent data set and to otherwise forgo using some maximum or actual short-term data that may be available, but is incomplete and would potentially bias the overall analysis when combined with data of a different type that must be used to complete the assessment. At the same time, we are not proposing to preclude reviewing authorities from mixing data of different types where they consider it appropriate and this technique produces a representative analysis.

In addition, fairness also dictates that we allow use of average short-term emissions rates and not require use of maximum emission rates in all cases. If maximum emissions rates may be used when data are available but averages are used when the data are insufficient, the analysis may be biased against the sources that have maximum emissions rate data. We want to encourage the use of CEMS that have been shown to be reliable and want to avoid a policy that inadvertently discourages the development and use of CEMS. Where most sources in an area are using CEMS to track emissions, the maximum rate approach may be more equitable, but this may not be the case in all areas. Thus, we propose to give the reviewing authority discretion to use available data and to achieve equitable treatment across sources and consistency in the analysis.

*Request for Comment on WESTAR Recommendations.* As part of its general approach of establishing a menu of available data and calculation methodologies, WESTAR has recommended that EPA establish a more extensive list of permissible data sources and methods for determining short-term emissions rates. For calculating short-term actual emission rates where CEMS data are available, WESTAR recommended that the menu include, with no implications of a hierarchy:

- Use short-term maximum emissions for the entire plant over a 2-year period;
- Determine maximum short-term emissions from each source at the facility;
- Determine short-term emission rates and sort them, then determine representative rates, such as an upper percentile, as the single short-term emission rate for modeling;
- Use CEMS data to determine actual emissions as defined by rule and explained by EPA in the preamble to the 1980 PSD rule revisions; or
- Use hour-by-hour CEMS data in the model.

In situations where CEMS data are not available, WESTAR recommended that the menu for calculating short-term actual emission rates include, with no implications of a hierarchy:

- Average 2 years of actual annual emissions representing normal operations surrounding the baseline date and date of analysis for current emissions, and divide by annual operating hours;
- Calculate emissions from production data for the 2 years prior to the baseline date or date of analysis for current emissions (emissions calculated using valid emissions factors and methods);
- Use 2 years of emissions data, which may be before or after the baseline dates, which have a similar facility configuration that would be representative of baseline emissions; or
- Use of allowable emission rates, including use of regulatory limits, where appropriate.

We request comment on whether we should expand the proposed options for short-term emissions rate calculation to include elements from WESTAR's menu.

4. Use of Allowable Emissions Rates

We have always allowed a reviewing authority or source to conduct a more conservative screening analysis using allowable emissions rates which are

typically higher than actual emissions rates. We propose to preserve that option under the new definition, but we are modifying the language from the prior definition slightly to make clear that we do not intend to mandate the use of allowable emissions, only to allow it at the discretion of the source or reviewing authority.

5. Emissions From a New or Modified Source

When an increment consumption analysis is performed in the context of a pending permit application to demonstrate that a new or modified source will not cause or contribute to an exceedance of the increment, the analysis must include the emissions from the new or modified source when it begins operations after the permitted construction is complete. In the past, we have required such emissions to be based on the potential to emit of the new or modified source. However, in reforms to the NSR program completed in 2002, we allowed modified sources to use projected actual emissions in calculating whether the change resulted in a significant net increase in emissions. See 67 FR 80290 (December 31, 2002). For the same reasons discussed in that rulemaking, we propose to adopt revised language for purposes of the increment consumption assessment that requires the use of projected actual emissions for a modified source. We propose to continue requiring the increment assessment to be based on the potential to emit of a new source that has not begun normal operations as of the date of the assessment.

*C. What meteorological models and data should be used in increment consumption modeling?*

In addition to information on emissions from sources in the relevant area, one also needs meteorological data to evaluate consumption of the PSD increments. Meteorological data are a necessary input to the air quality dispersion models that are used to identify the change in concentration relative to a pollutant-specific baseline date. This change in concentration is then compared to the increments to demonstrate compliance. Adequate and appropriate meteorological data are a critical input for dispersion models [13] in characterizing the state of the atmosphere in terms of the transport and diffusion of airborne pollutants within the modeling domain. Appendix W contains a list of meteorological data types and meteorological processors that are appropriate for various applications of preferred dispersion models.

Recent experience with PSD increment modeling exercises has raised questions regarding the adequacy of the current EPA guidance to the States and regulated community concerning the appropriateness of certain types of meteorological data and the amount of data that should be obtained for certain dispersion model applications, including PSD increment analyses. We discuss these issues below in light of existing guidance, and seek comment on the need for modification and/or development of additional guidance.

1. Types of Meteorological Data and Processing

Traditionally, dispersion model applications have utilized meteorological inputs derived from the direct processing of National Weather Service (NWS) observation data or meteorological data collected as part of a site-specific measurement program. However, prognostic meteorological models and other tools are available to project meteorological conditions in order to fill gaps in site-specific observational data. Recent experience suggests there may be a need for us to clarify the circumstances when it is permissible and appropriate to use meteorological data derived from prognostic meteorological models in dispersion model simulations such as a PSD increment consumption analysis.

Prognostic meteorological models use fundamental equations of momentum, thermodynamics, and moisture to determine the evolution of specific meteorological variables from a given initial state. These models can characterize meteorological conditions at times and locations where observational data do not exist. Photochemical grid-based air quality models, which require consistent input parameters distributed over an even grid in time and space, routinely utilize data output from prognostic meteorological models. Examples of prognostic meteorological models are:

- MM5—Penn State University/ National Center for Atmospheric Research.
- WRF—Weather Research and Forecasting Model, NOAA/NCAR.
- RUC—Rapid Update Cycle, NOAA Rapid Refresh Development Group.

In addition, diagnostic processors such as CALMET can format meteorological model output data for input into dispersion models. These diagnostic processors often can incorporate meteorological observation data into the process, resulting in a field of meteorological data that effectively blends the ground-truth of observations with the dynamics of the meteorological model. This data assimilation process frequently takes place within the prognostic meteorological models themselves. Run-time parameters may be set in the diagnostic processors to vary the influence observations may have on the resulting data set.

Appendix W identifies criteria for judging the adequacy and appropriateness of such meteorological input data for dispersion modeling applications, including the spatial (i.e., space) and temporal (i.e., time) representativeness of the data for the specific application and the ability of the individual meteorological parameters selected to properly characterize the transport and diffusion conditions based on the formulations of a specific dispersion model. Meteorological data may be considered adequate and appropriate for a particular dispersion model or application, but that determination does not necessarily imply the adequacy and appropriateness of the data for other dispersion models or other applications of the same model. The proper judgment of adequacy and appropriateness of meteorological data requires expert knowledge of each of the main components—the meteorological observation data; the meteorological processor; and the dispersion model formulations and data requirements.

Appendix W lists specific factors to consider when determining whether or not a set of meteorological data is representative for a particular dispersion model application. These include the proximity of the meteorological monitoring site to the area of interest, the complexity of the terrain in the area, the exposure of the meteorological monitoring site, and the period of data collected. Additional factors may be important depending on the requirements of specific models. For example, surface characteristics of the meteorological observation location, depending on land use and land cover characteristics, as well as terrain type and elevation, are required for input to AERMET, the meteorological processor for the AERMOD dispersion model.[14]

[13] Dispersion models are mathematical formulations that describe the fundamental processes that occur in the atmosphere. These processes, for example, include emission, transport, and chemical reaction of pollutants.

[14] AERMOD is a steady-state plume dispersion model for assessment of pollutant concentrations from a variety of sources. AERMOD simulates transport and dispersion from multiple point, area, or volume sources based on an up-to-date characterization of the atmospheric boundary layer. Sources may be located in rural or urban areas, and receptors may be located in simple or complex

Continued

These surface characteristics have a significant impact on the boundary layer [15] parameters that are required for input into the AERMOD model, and therefore have an impact on the resulting air quality results. The determination of representativeness for AERMOD therefore requires consideration of the potential impact of differences in surface characteristics between the meteorological monitoring site and the surface characteristics that generally describe the area upon which the air quality model simulation is focused.

For long-range transport modeling assessments or assessments involving complex winds that require non-steady-state dispersion modeling [16] appendix W allows, and in fact encourages, the use of prognostic mesoscale [17] meteorological models to provide input data into dispersion model simulations. *See* 40 CFR part 51, appendix W, paragraph 8.3(d). However, proper use of output from these prognostic meteorological models in dispersion model applications requires expert judgment, and acceptance of such data is contingent on the concurrence of the appropriate reviewing authorities. Appendix W further indicates that mesoscale meteorological fields should be used in conjunction with available NWS or comparable meteorological observations within and near the modeling domain.

In this action, we are proposing to provide additional guidelines for determining the appropriateness of prognostic meteorological model output data for use in dispersion models. We propose that a determination of appropriateness would involve a process equal in rigor to that already used to review prognostic meteorological model output data for use in photochemical grid modeling applications at the regional scale. We believe that our existing guidance for ozone, $PM_{2.5}$, and regional haze SIP modeling provides a useful basis for the process by which the State may allow use of certain data sets created by prognostic meteorological models as input into dispersion model applications provided these data sets are determined, by using this process, to be appropriate. Currently, acceptable quality of meteorological inputs derived from prognostic meteorological models would be demonstrated by statistical comparison of the prognostic model output to observations for key meteorological parameters, which may include temperature, water vapor mixing ratio, wind speed and direction (surface-level and aloft), clouds/radiation, precipitation, and the depth and evolution of vertical mixing. Identification of key meteorological parameters may depend on the type of model and the temporal and spatial scale of the application.

When making a determination of the representativeness of meteorological inputs derived from prognostic models, it is important to consider the influences of observations both in the meteorological model and in any subsequent processing of the prognostic model outputs when comparing the output to observations as part of the evaluation. For example, a portion of the meteorological observations may be set aside (i.e., not used in the data assimilation process) for evaluation purposes. However, it is important to emphasize that a statistical comparison of the meteorological observation data to the output of the diagnostic processor, or even of the prognostic meteorological models, can only be one part of any determination of appropriateness. A phenomenological evaluation, a generally qualitative comparison focused on the specific meteorological phenomena of importance to a specific application, can be used together with the more quantitative comparisons of specific parameters to provide a more complete assessment of the representativeness of meteorological data. Additional technical factors that may need to be considered in the determination of appropriateness include:

- Selection of geographic domains and time periods;
- Influence of boundary and initial conditions;
- Technical options governing the meteorological model calculations; and
- Data assimilation parameters.

Guidance for consideration of these factors can be found in ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' draft version 3.2, September 2006 [18] (referred to hereafter as ''the Draft Guidance''). However, this guidance concerns regional-scale photochemical grid model applications. We request comment on how these and other factors may be considered in a determination of appropriateness of meteorological data derived from prognostic meteorological models for use in dispersion modeling applications. As explained in the Draft Guidance, regional-scale photochemical grid model applications require the above factors to be considered with regard to prognostic meteorological model output, and additionally require consideration of other factors specific to photochemical grid modeling.

While meteorological model input that has been accepted for use in photochemical grid modeling may generally be acceptable for application in dispersion modeling inasmuch as the specifics of the meteorological model simulation are concerned, there are additional factors specific to dispersion modeling that must be considered. For example, the particular portion of the meteorological model output used in dispersion modeling must be considered in terms of its appropriateness for that particular dispersion model. Keeping in mind that the grid model is designed to produce a consistent set of parameters covering a large geographic area, we must consider the effects of extracting a few geographic points, from as few as only one grid cell in the entire model domain, and applying that very small subset of data from a greater dataset that was designed to be used in total.

For example, meteorological model simulations are influenced by input data assigned to the boundary grid cells in the domain (i.e., boundary conditions) as well as to all grid cells within the domain at the initial time step (i.e., initial conditions). There are appropriate techniques that may be applied to model simulations to substantially reduce the influence of initial and boundary conditions for photochemical grid modeling.

Boundary conditions, however, are incorporated into the meteorological model at each time step, and therefore the effect of the boundary conditions is evident throughout the meteorological model simulation. To reduce the effect of these assigned boundary conditions, we propose the area of interest be selected from an area substantially within the model simulation domain, for example, at least six grid cells from the boundary. We also propose to include in any review, a thorough

terrain. AERMOD accounts for building wake effects (i.e., plume downwash) based on the PRIME building downwash algorithms. The model employs hourly sequential preprocessed meteorological data to estimate concentrations for averaging times from 1 hour to 1 year (also multiple years). AERMOD is designed to operate in concert with two pre-processor codes: AERMET processes meteorological data for input to AERMOD, and AERMAP processes terrain elevation data and generates receptor information for input to AERMOD.

[15] The boundary layer is the layer of the atmosphere closest to the Earth's surface.

[16] Non-steady-state dispersion modeling is the one that accounts for spatial and temporal variability in meteorological parameters.

[17] Mesoscale is the meteorological phenomena with a horizontal extent from a few to several hundred kilometers.

[18] Available at *http://www.epa.gov/scram001/guidance/guide/draft_final-pm-O3-RH.pdf.*

description of the techniques used to extract data from a larger grid, even if the meteorological data have been approved for use in a photochemical grid model application, if the extraction is performed using a tool or technique not listed in appendix W as part of a preferred modeling system.

2. Years of Meteorological Data

In addition to clarifying the process and guidance for determining the circumstances under which it may be appropriate to input data from prognostic meteorological models into dispersion modeling, we believe it is also necessary to clarify guidance on the number of years of prognostic meteorological model output data that are necessary for a representative dispersion model simulation. With respect to the number of years of meteorological observation data that should be used for dispersion modeling, appendix W currently states the following:

- Five years of representative NWS meteorological observation data are required—the most recent, readily available 5-year period is preferred.
- At least 1 year of site-specific meteorological data is required—as many as 5 years are preferred.

*See* 40 CFR part 51, appendix W, paragraph 8.3.1.2(a). However, with respect to prognostic meteorological data, appendix W states that for long-range transport modeling and for other assessments involving non-steady-state dispersion modeling to account for complex flows, less than 5, but at least 3, years of data from prognostic meteorological models may be used, and that the years need not be consecutive. *See* paragraph 8.3.1.2(d). We believe that our current guidance provides adequate discretion to the State to determine which and how many years (but no less than 3 years) should be used with regard to meteorological model output appropriate for the dispersion model application. Consistent with appendix W, this approach is integrated with the process described in the preceding section for determining appropriateness of prognostic meteorological model output. When a State is developing a set of data years for dispersion modeling, we propose to allow the State to consider any data years that it has determined to be appropriate using the process described above even if those data years were not produced by the same exact meteorological model configuration and simulation. However, we also propose that the State must further determine that a particular set of data years can be modeled to produce an appropriate depiction of the air quality issue at hand.

3. Evaluating the Appropriateness of Data Years From Prognostic Meteorological Models for Modeling Worst-Case Impacts

For applications in which the modeling approach is designed to model worst-case impacts, we propose that the State should determine whether or not a set of years is appropriate based upon meteorological/climatological representativeness, and additionally determine whether or not that set of years is appropriate to simulate the worst-case conditions required of the application. Keeping in mind worst-case conditions might not be discernable until simulated through a dispersion model, the term ''worst-case'' does not describe a set of worst-case meteorology, but rather a set of meteorology that when modeled, produces a worst-case depiction of air quality. This relationship may not be apparent on simple inspection of only the meteorological data set.

That a particular data set sufficiently represents the meteorological observations for a given area for a given time period, based upon statistical analyses, may not be proof enough to determine that the particular data set is most appropriate for a dispersion application, especially when conducting worst-case applications. Additionally, a set of prognostic meteorological model output might be appropriate for dispersion modeling generally, but the portion of the data extracted for the specific dispersion model application should still be examined for appropriateness. While we do not explicitly propose a three-step process for determining appropriateness, these three individual examinations—appropriateness of the prognostic meteorological model output in general, appropriateness (meteorological representativeness) of the extracted data set, and appropriateness of the data set for the dispersion model application—are each a necessary part of the overall determination of appropriateness, especially in replacing data years of processed meteorological observations. Of course, once a particular data set/subset is determined appropriate, we do not anticipate re-examining that data set for use in other dispersion modeling provided the modeling applications and modeling domains are similar.

We request comment on continuing the current path, based upon appendix W's guidance that previous years of meteorological data which have been used as the basis for permit emission limitations should be added to any subsequent period of meteorological data used for dispersion modeling. *See* 40 CFR part 51, appendix W, paragraph 8.3.1.2(c). We will also accept comments on alternative methods for determining appropriate years of meteorological data including the use of data sets of processed observations, prognostic meteorological model output, or combinations of both.

*D. What are my documentation and data and software availability requirements?*

Appendix W currently provides recommendations (*see* paragraph 3.1.1) regarding documentation and software availability for preferred modeling techniques that are listed in appendix W. (The preferred models are found in appendix A to appendix W, and are sometimes referred to as ''Appendix A models.'') The purpose of these recommendations includes fostering consistency in the application of dispersion models, minimizing the burden on applicants related to acquiring and setting up modeling applications, and providing transparency regarding model formulations, model performance, and model input requirements. These appendix W recommendations regarding documentation and software availability for preferred modeling techniques include that the ''model and its code cannot be proprietary.'' *See* paragraph 3.1.1(b)(vi) of appendix W.

Application of the non-proprietary requirement to data developed for input into or use by a preferred model, or to other software used to process input data for a preferred model, is not explicitly addressed in appendix W. However, a strict requirement to be non-proprietary is currently not applied to alternative models (paragraph 3.2) that may be selected for use on a case-by-case basis, subject to the approval of the appropriate reviewing authority. Rather, the focus of recommendations related to the use of alternative models is on a demonstration and documentation of model performance that is equivalent or superior to the preferred model and, for cases where there is no preferred model, a scientific peer review and documentation and demonstration of the theoretical basis for the applicability of the alternative model. In addition, proprietary software interfaces to simplify the setup and analysis of Appendix A models have been developed by several commercial vendors, and have been in common usage for more than a decade. Such commercial software interfaces have not been subjected to a requirement to make the proprietary code available to the

public or the reviewing authority. However, demonstrations of equivalency may be, and have been, required of such proprietary interfaces, in keeping with paragraph 3.2.2(c) of appendix W.

With technical advances and the increased use of more sophisticated methodologies for developing the required meteorological inputs for preferred modeling techniques, and in particular the use of prognostic meteorological model outputs in the development of spatial and temporally varying meteorology for long-range transport modeling applications with the preferred CALPUFF model, it is appropriate to address the adequacy and appropriateness of existing guidance for these emerging modeling technologies. Given the critical impact that the processed meteorological data have on such modeling applications, basic requirements for technical documentation and performance demonstration are certainly necessary. However, we believe that the existing guidance provided for alternative modeling techniques adequately addresses these concerns. The existing guidance implies a certain discretion and latitude for the reviewing authority in defining the specific data and documentation requirements necessary to make its determination of the acceptability of an alternative modeling technique for a given application. However, such requirements should be technically appropriate and avoid imposing an unnecessary burden on the applicant. In the case of meteorological data inputs for dispersion models, many of the relevant issues and requirements for such data are also discussed above in section IV.C of this preamble.

In the special case of proprietary data that may be used in the development of model inputs, we believe that it is currently within the discretion of the State to require some independent review of the proprietary data by an oversight agency, if such a review is deemed critical to the overall assessment of the appropriateness of data for a particular modeling application. Another option within the discretion of the State would be for the State itself to conduct the review, provided that proprietary information and trade secrets are protected under a system that is equivalent to EPA's rules for requesting non-disclosure of Confidential Business Information (CBI) submitted to the Agency. *See* 40 CFR part 2. Provided that any appropriate and necessary reviews can be conducted by an independent body or the State reviewing authority with protection against disclosure of CBI, we do not believe it is necessary to require such proprietary data to be made available to the general public or to wholly preclude reliance on the data in regulatory modeling applications.

In the case of software, the focus of the determination of acceptability by the reviewing authority should be on the adequacy of the technical documentation and performance demonstrations that are required to support the use of such software. More specifically in the case of proprietary software, the reproducibility of the data or model simulation may be an important component of the documentation to ensure confidence in the modeling results, and the applicant should facilitate such a demonstration when required. Additional documentation regarding the quality assurance procedures used in the development of the proprietary software may also be relevant to supporting the integrity and accuracy of the results.

We believe that the current text of appendix W adequately defines the documentation and software availability requirements related to both preferred and alternative modeling techniques. We request comment on whether additional guidance is needed to clarify these requirements as they apply to the use of proprietary software and/or data to develop input for an Appendix A modeling application for PSD increment consumption.

## VI. Implementation Issues

### *A. Is there a need for States to make revisions to their SIPs?*

As described in this notice, with these regulations we are proposing to refine certain aspects of PSD increment analyses to provide greater clarity to States and regulated sources on how to calculate increases in concentrations for purposes of determining compliance with the PSD increments. Once we finalize these proposed regulations, we intend to encourage States to incorporate them for the sake of consistency and clarity, and to make their SIPs consistent with the proposed rule amendments. This would be a relatively easy task given that SIP changes resulting from other upcoming NSR rulemakings (e.g., rules for electric generating units (EGUs); corn milling; potential to emit (PTE); and aggregation, debottlenecking, and project netting) will likely be required in roughly the same time period. However, we believe that SIP changes would not necessarily be required in order for reviewing authorities to begin conducting PSD increment analyses consistent with these regulations because EPA's prior recommendations have not been binding on States. We are specifically seeking comment on the need for SIP revisions or any viable alternatives for implementing the changes for these proposed increment analysis provisions.

### *B. When would these policies be put into effect?*

We propose to make the proposed regulations effective 60 days from promulgation.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. We are not proposing any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of this action. Although we are refining our existing regulations and policy on the analysis of PSD increment consumption, the proposed regulations do not contain new paperwork requirements for permit applicants or reviewing authorities. The PSD increment analysis is already required under existing EPA regulations. The OMB has previously approved the information collection requirements contained in the existing PSD program regulations (40 CFR 51.166 and 52.21) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003, EPA ICR number 1230.17. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will not impose any new requirements on small entities. The increment consumption analysis is already required under existing PSD regulations and the proposed refinements to our existing regulations and policy are not expected to increase the economic impact of this analysis on regulated entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed action contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The PSD increment consumption analysis is already required under existing regulations. In this rulemaking, we are only proposing to refine our existing regulations and policy on how this analysis may be conducted and are not imposing any additional analytical requirements. Thus, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, this proposal would not impose any new requirements on small governments.

*E. Executive Order 13132—Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

The EPA has concluded that this proposed rule may have federalism implications. The proposed rule establishes Federal standards for the administration of the PSD program by State reviewing authorities. However, the proposed rule does not impose additional requirements on State reviewing authorities because a PSD increment analysis is already required under existing regulations. In addition, EPA proposes in this action to make clear that States have discretion to use their best judgment in conducting elements of the increment consumption analysis. Thus, this rule will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law. Thus, the requirements of sections 6(b) and 6(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with several State officials and representatives of State governments early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. As

discussed above, this proposal has been informed by the recommendations of the Western States Air Resources Council (WESTAR) PSD Reform Workgroup, which is an organization that includes State officials who have sought greater clarity in methodologies for evaluating consumption of the PSD increment. In addition, EPA has also been consulting for several years with State officials in North Dakota about the parameters for the increment consumption analysis.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

*F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 13175, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The EPA has concluded that this proposed rule may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt Tribal law.

By refining our existing regulations and policy, this proposal may affect how reviewing authorities determine increment consumption on the tribal lands that have been redesignated to Class I or are in the process of being redesignated to Class I. For that reason, EPA will provide an opportunity for meaningful and timely involvement in this action by consulting, during the period between proposal and promulgation, with tribal officials from the six Tribes whose reservations have been redesignated from Class II to Class I or are in the process of being so redesignated. In addition, EPA specifically solicits additional comment on this proposed rule from all tribal officials.

*G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The proposed rule does not impose any new regulatory or analytical requirements, but simply refines existing regulations and policy with respect to the PSD increment consumption analysis that is currently required. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that may be pertinent to the effect of this proposed rule on children.

*H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because it does not impose any new requirements on sources that supply, distribute, or use energy. The proposed rule does not establish additional regulatory or analytical requirements, but simply refines existing regulations and policy with respect to the PSD increment consumption analysis that is currently required.

*I. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The EPA has determined that this proposed rule would not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule does not establish or eliminate regulatory or analytical requirements, but simply refines existing regulations and policy with respect to the PSD increment consumption analysis that is currently required.

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**VIII. Statutory Authority**

The statutory authority for this action is provided by sections 163, 166, 169(4), and 301(a) of the Act as amended (42 U.S.C. 7473, 7476, 7479(4), and 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7607(d)).

**List of Subjects**

*40 CFR Part 51*

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations.

*40 CFR Part 52*

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations.

Dated: May 24, 2007.

**Stephen L. Johnson,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

## PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

## Subpart I—[Amended]

2. Section 51.166 is amended as follows:

a. By revising paragraph (b)(13);

b. By revising paragraph (b)(21)(i);

c. By revising paragraph (f);

d. By removing from paragraph (p)(5)(i) the cross reference to ''(q)(4)'' and adding in its place ''(p)(4)'';

e. By removing from paragraphs (p)(5)(iii) and (p)(6)(iii) the cross reference to ''(q)(7)'' and adding in its place ''(p)(7)''; and

f. By removing from paragraph (p)(7) the cross reference to ''(q)(5) or (6)'' and adding in its place ''(p)(5) or (6)''.

The revisions read as follows:

### § 51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(13)(i) *Baseline concentration* means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(*a*) The actual emissions, as defined in paragraph (f)(1) of this section, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section; and

(*b*) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(*a*) Actual emissions, as defined in paragraph (f)(1) of this section, from any major stationary source on which construction commenced after the major source baseline date; and

(*b*) Actual emissions increases and decreases, as defined in paragraph (f)(1) of this section, at any source (including stationary, mobile, and area sources) occurring after the minor source baseline date.

* * * * *

(21)(i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, for establishing a PAL under paragraph (w) of this section, or for determining consumption of ambient air increments. Instead, paragraphs (b)(40), (b)(47), and (f)(1) of this section shall apply for those purposes.

* * * * *

(f) *Methods for determining increment consumption.*

(1) *Actual emissions.* For purposes of determining consumption of the ambient air increments set forth in paragraph (c) of this section, the plan shall define ''actual emissions'' in accordance with paragraphs (f)(1)(i) through (vii) of this section.

(i) Actual emissions shall be calculated based on information that, in the judgment of the reviewing authority, provides the most reliable, consistent, and representative indication of the emissions from a unit or group of units in an increment consumption analysis as of the baseline date and on subsequent dates. In general, actual emissions for a specific unit should be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. However, where records of actual operating hours, production rates, and composition of materials are not available or are incomplete, the reviewing authority shall use its best professional judgment to estimate these parameters from available information in accordance with the criteria in this paragraph. When available and consistent with the criteria in this paragraph, data from continuous emissions monitoring systems may be used.

(ii) In general, when evaluating consumption of an increment averaged over an annual time period, actual emissions as of a particular date in an increment consumption analysis (the applicable baseline date or the current time period) shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation.

(iii) When evaluating consumption of an increment averaged over a period of less than 1 year (i.e., 24-hour or 3-hour averaging), actual emissions as of a particular date in an increment consumption analysis (the applicable baseline date or the current time) may equal the average rate, for the applicable averaging time, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date. The average rate may be calculated by dividing an annual rate by the number of hours the unit was actually operating over the annual period. The reviewing authority may use an actual maximum rate over a 24-month period when sufficient data are available to produce a consistent, reliable, and representative analysis of the change in emissions from baseline to the current time period.

(iv) The reviewing authority may allow actual emissions to be based on a different time period than the 24 months preceding a particular date upon a determination that such period is more representative of normal source operation as of the particular date, based upon credible information showing that the unit's operations in the 24 months preceding the date were not typical of operations as of the particular date. A period after the particular date may be used, but only if such period is more representative of normal source operations as of the particular date. Operations occurring prior to a particular date are not representative of normal source operations for a particular date if they permanently ceased more than 24 months prior to that date. The different time period shall be a consecutive 24-month period unless two non-consecutive 12-month periods are demonstrated to be more representative of normal source operation as described above.

(v) The reviewing authority may use source-specific allowable emissions for the unit instead of the actual emissions of the unit.

(vi) For any modified emissions unit that has not resumed normal operations on the date of an increment consumption analysis, the actual emissions on the date the source begins operation shall equal the projected actual emissions of the unit on that date. For any new emissions unit that has not begun normal operations on the date of an increment consumption analysis, the actual emissions on the date the new source begins operations shall equal the potential to emit for that source.

(vii) To the extent any requirement of this paragraph (f)(1) conflicts with a recommendation in appendix W of this part, paragraph (f)(1) shall control.

(2) *Exclusions from increment consumption.* (i) The plan may provide that the following concentrations shall be excluded in determining compliance with a maximum allowable increase:

(*a*) Concentrations attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, natural gas, or both by reason of an order in effect under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) over the emissions from such sources before the effective date of such an order;

(*b*) Concentrations attributable to the increase in emissions from sources which have converted from using natural gas by reason of natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan;

(*c*) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities of new or modified sources;

(*d*) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration;

(*e*) Concentrations attributable to the temporary increase in emissions of sulfur dioxide, particulate matter, or nitrogen oxides from stationary sources which are affected by plan revisions approved by the Administrator as meeting the criteria specified in paragraph (f)(2)(iii) of this section; and

(*f*) Concentrations attributable to sources that obtained a permit based on a variance issued pursuant to paragraph (p)(4) of this section, but only with respect to the Class I increment in the area for which the variance was issued. Concentrations attributable to such sources shall continue to be included in determining compliance with the maximum allowable increase set forth in paragraphs (p)(4).

(ii) If the plan provides that the concentrations to which paragraph (f)(2)(i)(*a*) or (*b*) of this section refers shall be excluded, it shall also provide that no exclusion of such concentrations shall apply more than 5 years after the effective date of the order to which paragraph (f)(2)(i)(*a*) of this section refers, or the plan to which paragraph (f)(2)(i)(*b*) of this section refers, whichever is applicable. If both such order and plan are applicable, no such exclusion shall apply more than 5 years after the later of such effective dates.

(iii) For purposes of excluding concentrations pursuant to paragraph (f)(2)(i)(*e*) of this section, the Administrator may approve a plan revision that:

(*a*) Specifies the time over which the temporary emissions increase of sulfur dioxide, particulate matter, or nitrogen oxides would occur. Such time is not to exceed 2 years in duration unless a longer time is approved by the Administrator.

(*b*) Specifies that the time period for excluding certain contributions in accordance with paragraph (f)(2)(iii)(*a*) of this section, is not renewable;

(*c*) Allows no emissions increase from a stationary source which would:

(*1*) Impact a Class I area or an area where an applicable increment is known to be violated; or

(*2*) Cause or contribute to the violation of a national ambient air quality standard;

(*d*) Requires limitations to be in effect the end of the time period specified in accordance with paragraph (f)(2)(iii)(*a*) of this section, which would ensure that the emissions levels from stationary sources affected by the plan revision would not exceed those levels occurring from such sources before the plan revision was approved.

* * * * *

## PART 52—[AMENDED]

3. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart A—[Amended]

4. Section 52.21 is amended as follows:

a. By revising paragraph (b)(13);

b. By revising paragraph (b)(21)(i);

c. By adding paragraph (f);

d. By removing from paragraph (p)(6) the cross reference to ''(q)(4)'' and adding in its place ''(p)(5)'';

e. By removing from paragraphs (p)(6) and (p)(7) the cross reference to ''(q)(7)'' and adding in its place ''(p)(8)''; and

f. By removing from paragraph (p)(8) the cross reference to ''(q)(5) or (6)'' and adding in its place ''(p)(6) or (7)''.

The addition and revisions read as follows:

### § 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(13)(i) *Baseline concentration* means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(*a*) The actual emissions, as defined in paragraph (f)(1) of this section, representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph (b)(13)(ii) of this section; and

(*b*) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(ii) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(*a*) Actual emissions, as defined in paragraph (f)(1) of this section, from any major stationary source on which construction commenced after the major source baseline date; and

(*b*) Actual emissions increases and decreases, as defined in paragraph (f)(1) of this section, at any source (including stationary, mobile, and area sources) occurring after the minor source baseline date.

* * * * *

(21)(i) *Actual emissions* means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs (b)(21)(ii) through (iv) of this section, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, for establishing a PAL under paragraph (aa) of this section, or for determining consumption of ambient air increments. Instead, paragraphs (b)(41), (b)(48), and (f)(1) of this section shall apply for those purposes.

* * * * *

(f) *Methods for determining increment consumption*—(1) *Actual emissions.* For purposes of determining consumption of the ambient air increments set forth in paragraph (c) of this section, the term ''actual emissions'' shall be defined in accordance with paragraphs (f)(1)(i) through (vii) of this section.

(i) Actual emissions shall be calculated based on information that, in the judgment of the Administrator, provides the most reliable, consistent, and representative indication of the emissions from a unit or group of units in an increment consumption analysis as of the baseline date and on subsequent dates. In general, actual emissions for a specific unit should be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. However, where records of

actual operating hours, production rates, and composition of materials are not available or are incomplete, the Administrator shall use his or her best professional judgment to estimate these parameters from available information in accordance with the criteria in this paragraph. When available and consistent with the criteria in this paragraph, data from continuous emissions monitoring systems may be used.

(ii) In general, when evaluating consumption of an increment averaged over an annual time period, actual emissions as of a particular date in an increment consumption analysis (the applicable baseline date or the current time period) shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation.

(iii) When evaluating consumption of an increment averaged over a period of less than one year (i.e., 24-hour or 3-hour averaging), actual emissions as of a particular date in an increment consumption analysis (the applicable baseline date or the current time) may equal the average rate, for the applicable averaging time, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date. The average rate may be calculated by dividing an annual rate by the number of hours the unit was actually operating over the annual period. The Administrator may use an actual maximum rate over a 24-month period when sufficient data are available to produce a consistent, reliable, and representative analysis of the change in emissions from baseline to the current time period.

(iv) The Administrator may allow actual emissions to be based on a different time period than the 24 months preceding a particular date upon a determination that such period is more representative of normal source operation as of the particular date, based upon credible information showing that the unit's operations in the 24 months preceding the date were not typical of operations as of the particular date. A period after the particular date may be used, but only if such period is more representative of normal source operations as of the particular date. Operations occurring prior to a particular date are not representative of normal source operations for a particular date if they permanently ceased more than 24 months prior to that date. The different time period shall be a consecutive 24-month period unless two non-consecutive 12-month periods are demonstrated to be more representative of normal source operation as described above.

(v) The Administrator may use source-specific allowable emissions for the unit instead of the actual emissions of the unit.

(vi) For any modified emissions unit that has not resumed normal operations on the date of an increment consumption analysis, the actual emissions on the date the source begins operation shall equal the projected actual emissions of the unit on that date. For any new emissions unit that has not begun normal operations on the date of an increment consumption analysis, the actual emissions on the date the new source begins operations shall equal the potential to emit for that source.

(vii) To the extent any requirement of this paragraph (f)(1) conflicts with a recommendation in 40 CFR part 51, appendix W, paragraph (f)(1) shall control.

(2) *Exclusions from increment consumption.* In determining compliance with the maximum allowable increase, the Administrator shall exclude concentrations attributable to sources that obtained a permit based on a variance issued pursuant to paragraphs (p)(5) of this section, but only with respect to the Class I increment in the area for which the variance was issued. Concentrations attributable to such sources shall continue to be included in determining compliance with the maximum allowable increases set forth in paragraph (p)(5).

* * * * *

[FR Doc. E7–10459 Filed 6–5–07; 8:45 am]

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Federal Register

**Wednesday,**
**June 6, 2007**

## Part III

# Nuclear Regulatory Commission

**10 CFR Parts 170 and 171**
**Revision of Fee Schedules; Fee Recovery for FY 2007; Final Rule**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 170 and 171

**RIN 3150–AI00**

### Revision of Fee Schedules; Fee Recovery for FY 2007

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is amending the licensing, inspection, and annual fees charged to its applicants and licensees. The amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover approximately 90 percent of its budget authority in fiscal year (FY) 2007, less the amounts appropriated from the Nuclear Waste Fund (NWF) and for Waste Incidental to Reprocessing (WIR) activities and generic homeland security activities. The required fee recovery amount for the FY 2007 budget is approximately $669.2 million. After accounting for carryover and billing adjustments, the net amount to be recovered is approximately $670.5 million.

**DATES:** *Effective Date:* August 6, 2007.

**ADDRESSES:** The comments received and the NRC's work papers that support these final changes to 10 CFR parts 170 and 171 are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received may also be viewed via the NRC's interactive rulemaking Web site (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*.

The work papers may also be examined at the NRC's PDR, Room O–1F22. One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR reproduction contractor will copy documents for a fee.

**FOR FURTHER INFORMATION CONTACT:** Renu Suri, telephone 301–415–0161; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**



## I. Background

The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. The NRC receives appropriations each year for 10 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), to pay for the costs of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities under section 274 of the Atomic Energy Act of 1954, as amended. The required fee recovery amount for the FY 2007 budget is approximately $669.2 million. After accounting for carryover and billing adjustments, the net amount to be recovered is approximately $670.5 million.

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for new licenses and the review of renewal applications, the review of amendment requests, and inspections. Second, annual fees established in 10 CFR part 171 under the authority of OBRA–90, as amended, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

In accordance with Section 637 of the Energy Policy Act of 2005 (Pub. L. 109–58), the budgeted resources associated with generic homeland security activities are excluded from the NRC's fees each year, beginning with this FY 2007 fee rule. This new legislative provision was discussed in the NRC's FY 2006 proposed and final fee rules (71 FR 7349, February 10, 2006; 71 FR 30721, May 30, 2006), and results in the removal of approximately $33 million from the fee base in FY 2007. These funds cover generic activities—those activities that support an entire license fee class or classes of licensees—such as rulemakings and guidance development. Under the NRC's authority under the IOAA, the NRC will continue to bill under part 170 for all licensee-specific homeland security-related services provided, including security inspections (which include force-on-force exercises) and security plan reviews.

On February 15, 2007, the President signed the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5). The provisions in Sections 101, 111, and 20317 of Pub. L. 110–5 appropriated $824,888,507 to the NRC to carry out its mission for FY 2007. This amount is $8.3 million higher than the funding levels used for the FY 2007 proposed fee rule. The FY 2007 proposed fee rule was based on the FY 2007 Energy and Water Development Appropriations Bill passed by the U.S. House of Representatives in 2006. As discussed in the Statements of Consideration of the FY 2007 proposed fee rule, the NRC's FY 2007 final fee rule has been adjusted to reflect the enacted budget. Therefore, fees in the FY 2007 final fee rule differ from those in the proposed rule.

The amount of the NRC's required fee collections is set by law, and is therefore outside the scope of this rulemaking. In FY 2007, the NRC's total fee recovery increased by $45.2 million from FY 2006, mostly in response to the increased budget for new reactor licensing activities. The FY 2007 budget was allocated to the fee classes that the budgeted activities support. As such, the annual fees for reactor licensees increased. The annual fees for most other licensees decreased due to factors such as the removal of generic homeland security resources from the fee base, and other reductions in budgeted resources allocated to the fee classes. Another factor affecting the amount of annual fees for each fee class is the estimated fee collection under part 170.

**II. Response to Comments**

The NRC published the FY 2007 proposed fee rule on February 2, 2007 (72 FR 5107) to solicit public comment on its proposed revisions to 10 CFR parts 170 and 171. The NRC received seven comments by the close of the comment period (March 5, 2007). The comments have been grouped by issue and are addressed in a collective response.

*A. Information Provided by NRC in Support of Proposed Rule*

*Comment.* Some commenters requested more explanation for the fee increases. The details requested include explanation of direct hours worked annually per direct full-time equivalent (FTE) and NRC's cost breakdown of the major elements that comprise the annual fee. In addition, some commenters were not satisfied with the allocation of fee recovery between parts 170 and 171.

*Response.* Consistent with the requirements of OBRA–90, as amended, the purpose of this rulemaking is to establish fees necessary to recover 90 percent of the NRC's FY 2007 budget authority, less the amounts appropriated from the NWF, WIR activities, and for generic homeland security activities, from applicants and the various classes of NRC licensees. As with each year's fee rulemaking, the FY 2007 proposed fee rule described the types of activities included in the proposed fees and explained how the fees were calculated to recover the budgeted costs for those activities. Additional summary calculations were provided in the FY 2007 proposed fee rule. A table was presented showing the aggregate calculations for each fee class (e.g., total budgeted resources and estimated part 170 collections). There was also a summary explanation provided for the changes in fees and budgeted resources for each fee class.

In addition to the information provided in the proposed rule, the supporting work papers were available for public examination in ADAMS and, during the 30-day comment period, in the NRC's PDR at One White Flint North, 11555 Rockville Pike, Rockville, MD. The work papers show the total budgeted FTE and contract budgeted resources at the planned activity level for all agency activities. These papers present an itemized accounting of all the budgeted resources included in the fees, at the lowest level of detail available agency-wide. The papers included extensive information detailing the allocation of the budgeted costs for each planned activity within each program to the various classes of licenses, as well as information on categories of budgeted costs included in the hourly rates.

The FY 2007 proposed fee rule work papers included a separate document for each fee class and surcharge category to show the budget allocations for FY 2007 and FY 2006 at the planned activity level, thereby making it easier to see the reasons for any fee changes between FY 2007 and FY 2006. Accordingly, the proposed rule showed the total value of budgeted resources allocated to a fee class and described the major reasons for any fee change(s). The supporting work papers clearly set forth the changes in budgeted resources for each class at the planned activity level for both FTE and contract dollars. For example, the proposed fee rule stated that the power reactor annual fee increased due to an increase in budgeted resources for activities such as Technical Development Activities for new reactor licensing activities (other examples were also provided). The work papers showed that the budgeted resources for that planned activity increased by approximately 21 FTE and $14 million in FY 2007, as compared to FY 2006.

Also to assist commenters provide meaningful comments, the NRC made available NUREG–1100, Volume 22, ''Performance Budget: Fiscal Year 2007'' (February 2006), which discusses the NRC's budget for FY 2007, including the activities to be performed in each program. This document is available on the NRC public Web site at *http://www.nrc.gov/reading-rm.html*. The extensive information available provided the public with sufficient information on how NRC calculated the proposed fees. Additionally, the contact listed in the proposed fee rule was available during the public comment period to answer any questions that commenters had on the development of the proposed fees. Therefore, the NRC believes that ample information was available on which to base constructive comments on the proposed revisions to parts 170 and 171 and that its fee schedule development is a transparent process.

The purpose of the FY 2007 fee rulemaking, as with prior year fee rulemakings, is to establish fees in a fair and transparent manner to recover the required portion of the NRC's budget. The estimate of the direct staff hours per FTE used for the calculation of the hourly rate was revised based on NRC's time and labor system data. This revised estimate reflects changes that are taking place with the NRC's workforce. The changes reflect the increase in retirements of more experienced NRC staff and the increase in hiring of new staff to fill these vacancies. In addition, the NRC is also recruiting new staff due to the projected increase in its workload particularly as it relates to new reactors. In the near term, as new, less experienced staff continue to come on board, more hours are required for training and less are available for direct work. As a result, the estimated direct staff hours per FTE is lower. NRC plans to review this estimate in future years and to update it as appropriate.

Regarding the comments that expressed concern that too much of the NRC's budget was designated for recovery under part 171, as discussed in previous fee rulemakings, the NRC is not at liberty to allocate fees indiscriminately between parts 170 and 171 because fee allocation between the parts is controlled by statute. The NRC assesses part 170 fees under the IOAA, consistent with implementing OMB Circular A–25, ''User Charges,'' to recover the costs incurred from each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public. Generic costs that do not provide special benefits to identifiable recipients cannot be recovered under part 170. Further, the NRC notes that, as required by OBRA–90, as amended, the part 171 annual fee recovery amounts are offset by the estimated part 170 fee collections. The NRC's work papers clearly set forth the components of these generic costs and how those costs are recovered through annual fees. Additionally, the NRC notes that it has taken action to maximize the amount recovered under part 170, consistent with existing law and agency policy. For example, in FY 1998 the NRC began charging part 170 fees for all resident inspectors' time (63 FR 31840; June 10, 1998), and in FY 1999 the NRC started charging part 170 fees for all project manager activities associated with the oversight of the assigned license or plant (64 FR 31448; June 10, 1999). In FY 2003, the NRC amended its regulations to allow the NRC to recover costs associated with contested hearings on licensing actions involving U.S. Government national security initiatives through part 170 fees assessed to the affected applicant or licensee (67 FR 64033; October 17, 2002). Included under this provision are activities involving the fabrication and use of mixed oxide fuel. Additionally, beginning with the FY 2005 fee rule (70 FR 30526; May 26, 2005), the NRC revised its hourly rate calculation formula to better reflect actual agency

costs, resulting in higher hourly rates. These higher hourly rates increased fee recovery under part 170.

*B. Specific Part 170 Issue*

Hourly Fees

*Comment.* One commenter requested a better explanation for the increase in the NRC hourly rate compared to the total inflation rate.

*Response.* The change in inflation rate is only one of the variables affecting the increase in the hourly rate. The NRC's hourly rates are based on budgeted costs and are established each year to meet the NRC's fee recovery requirements as explained in the proposed rule and in Section III.A.1., Hourly Rate, of this final rule. The NRC budgeted costs have increased in recent years in response to increased workload, e.g., new reactor licensing activities. The hourly rates are calculated to recover all of the budgeted costs supporting the services provided under part 170, including all programmatic and agency overhead, consistent with the full cost recovery concept emphasized in OMB's Circular A–25, ''User Charges.'' Therefore, the increase in the hourly rate reflects the increase in the NRC funding. In addition, the NRC revised its estimate of the direct staff hours per FTE which also contributed to the increase in the hourly rate. The NRC did not receive any comments on ways to revise the hourly rate calculation methodology, and notes that other comments have consistently supported the NRC in its efforts to collect more of its budget through part 170 fees-for-services rather than part 171 annual fees. Therefore, the NRC is retaining the hourly rate formula as presented in the FY 2007 proposed fee rule. This results in an hourly rate of $258.

The Revised Continuing Appropriations Resolution, 2007, enacted after the FY 2007 proposed fee rule was published, provided NRC with additional funding. As a result, the hourly rate increased from $256 in the proposed rule to $258 in this final rule. The NRC recognizes that the higher hourly rates will have a greater impact on licensees that receive more part 170 services, but believes this is appropriate because the new rates more accurately reflect the costs of providing these services.

*C. Specific Part 171 Issue*

Annual Fees for Uranium Recovery Licensees

*Comment.* Several commenters supported the reduction in annual fees for uranium recovery licensees. They also recommended devoting additional resources to address the numerous license application and amendment requests that NRC is receiving, and will receive, and using hourly charges to recover the cost of these resources.

*Response.* The reduction in the annual fees is due to reduction in uranium recovery resources allocated to this fee class. As appropriate, the NRC will continue to recover its cost of application and amendment reviews by billing the identifiable applicants using the hourly rate. The NRC's FY 2008 Budget sent to the Congress includes more resources for uranium recovery fee class. In addition, the NRC is also looking at streamlining the review process for the large number of applications expected to be received.

*D. Other Issues*

1. Changing NRC's Small Entity Size Standards

*Comment.* One commenter requested that NRC change its definition of Small Entity to be consistent with the Small Business Administration (SBA) standards.

*Response.* The NRC acknowledges that the size standards used by NRC to determine small entity status are currently different from the SBA standards. The NRC will conduct a parallel rulemaking proceeding to make adjustments to its size standards to reflect SBA's actions as appropriate. We expect that final rule will be issued and become effective soon after the final fee rule becomes effective. The size standards in this FY 2007 final fee rule will be replaced by the new size standards. Once the size standards rulemaking takes effect, licensees who meet the amended size standards for a small entity can submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171'' to qualify prospectively for the reduced small entity annual fee.

2. Need for Timely Budget Estimate

*Comment.* Several commenters raised concerns that the timing of the issuance of the fee rule makes it difficult for licensees to plan for regulatory expenses within the framework of their normal budget cycles. One commenter specifically noted that the lack of adequate notice results from the NRC's fiscal year differing from the majority of licensees' fiscal years, fee recovery is not known until after a new calendar year begins. To address this issue, these commenters suggested that the NRC publish an estimate of fees for the following year, coincident with issuance of the proposed fee rule each year.

*Response.* The NRC acknowledges the concerns raised by these commenters, and has addressed similar comments in previous fee rulemakings. The timing of the NRC's required fee collections is established by OBRA–90, as amended. In accordance with that statute, the NRC must collect the mandated level of fees by the end of the fiscal year to which they are attributed, in this case September 30, 2007. As such, the agency does not have the discretion to delay the collection of these fees by deferring some fee increases.

Additionally, the timing of the fee rule each year is contingent upon when the NRC receives its Congressionally approved budget. The Commission makes every effort to issue the proposed fee rule as soon as possible after receiving its appropriation. Because the NRC does not know in advance what its future budgets will be (i.e., proposed budgets must be submitted to the OMB for its review before the President submits the budget to Congress for enactment), the NRC believes it is not practicable to project fees based on future estimated budgets. For example, at the time the FY 2007 proposed fee rule was published, the NRC was under a continuing resolution that limited the FY 2007 funds to the NRC's FY 2006 funding level which was approximately $83 million lower than what the President eventually signed into law on February 15, 2007. Had the NRC proposed or established preliminary fees based on the NRC funding in FY 2006, these estimated fees would have been quite different from the fees ultimately assessed to licensees. The fees in this final rulemaking reflect the final approved appropriation that was signed by the President on February 15, 2007.

Changes in economic markets, as well as the security and policymaking environments, make predicting the NRC's future budgets even more difficult than in previous years. However, even if the NRC were able to reasonably predict a future year total budget, the annual fee amounts are also highly sensitive to other factors, including the allocation of these budgeted resources to license fee classes, the numbers of licensees in a fee class, and the proportion of total class costs recovered from part 170. (Part 170 revenue from a fee class is particularly difficult to predict in advance, and more so for fee classes with small numbers of licensees, whose annual fees are even more sensitive to part 170 revenue estimates). Estimating these factors even further in advance than the NRC currently does would likely lead to inaccurate future fee projections, which

would be misleading to applicants and licensees.

**III. Final Action**

The NRC is amending its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2007 budget authority less the appropriations received from the NWF and for WIR activities and generic homeland securities. The NRC's total budget authority for FY 2007 is $824.9 million, of which approximately $45.8 million has been appropriated from the NWF, $2.5 million for WIR activities, and $33 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC must recover approximately $669.2 million in FY 2007 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2007 is $45.2 million more than the amount estimated for recovery in FY 2006, an increase of approximately 7 percent.

The FY 2007 fee recovery amount is increased by $1.7 million to account for billing adjustments (i.e., for FY 2007 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2007 for FY 2006 invoices). There is approximately $0.5 million FY 2006 carryover to apply to FY 2007 fee collections. This leaves approximately $670.5 million to be recovered in FY 2007 through part 170 licensing and inspection fees and part 171 annual fees.

The NRC estimates that in FY 2007 approximately $205.1 million will be recovered from part 170 fees. This represents an increase of approximately 11 percent as compared to the actual part 170 collections of $185 million for FY 2006. The NRC derived the FY 2007 estimate of part 170 fee collections based on the previous four quarters of billing data for each license fee class, with adjustments to account for changes in the NRC's FY 2007 budget, as appropriate. The remaining $465.3 million will be recovered through the part 171 annual fees in FY 2007, compared to $441.7 million for FY 2006, an increase of approximately 5.3 percent.

Table I summarizes the budget and fee recovery amounts for FY 2007 (individual values may not sum to totals due to rounding).

TABLE I.—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2007

[Dollars in millions]

| | |
|---|---|
| Total Budget Authority | $824.9 |
| Less NWF, WIR, and generic homeland security | −81.3 |
| Balance | $743.6 |
| Fee Recovery Rate for FY 2007 | × 90.0% |
| Total Amount to be Recovered For FY 2007 | $669.2 |
| Less Carryover from FY 2006 | −0.5 |
| Plus Part 171 Billing Adjustments. | |
| Unpaid FY 2007 Invoices (estimated) | 5.4 |
| Less Payments Received in FY 2007 for Prior Year Invoices (estimated) | −3.7 |
| Subtotal | 1.7 |
| Amount to be Recovered Through Parts 170 and 171 Fees | $670.5 |
| Less Estimated Part 170 Fees | −205.1 |
| Part 171 Fee Collections Required | $465.3 |

The NRC has updated the part 170 estimates based on the latest invoice data available. In total, the part 170 estimates increased by approximately $12 million from the FY 2007 proposed fee rule; approximately $10 million of this increase is from the power reactor fee class. This change and its associated impacts on each fee class is discussed in more detail in Section III.B.4, Revised Annual Fees, of this document.

Fees for most licensees decreased between the FY 2007 proposed and final fee rules. The most significant changes were an 47.6 percent decrease in the annual fee for uranium recovery facilities other than DOE and an 17.3 percent decrease in the annual fee for test and research (non power) reactors which resulted from changes in estimated part 170 fee collections for these fee classes.

The FY 2007 final fee rule is a ''major rule'' as defined by the Congressional Review Act of 1996. Therefore, the NRC's fee schedules for FY 2007 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more, upon publication of the FY 2007 final rule. For these licensees, payment is due on the effective date of the FY 2007 rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2007 annual fee less payments made in the first three quarters of the fiscal year. Those materials licensees whose license anniversary date during FY 2007 falls before the effective date of the final FY 2007 rule will be billed for the annual fee during the anniversary month of the license at the FY 2006 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2007 rule will be billed for the annual fee at the FY 2007 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

The NRC has discontinued mailing the final fee rule to all licensees as a cost saving measure, in accordance with its FY 1998 announcement. Accordingly, the NRC does not plan to routinely mail the FY 2007 final fee rule or future final fee rules to licensees. The NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of Financial Management, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees@nrc.gov*. In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *http://ruleforum.llnl.gov* for at least 90 days after the effective date of the final rule, and will be permanently available at *http://www.access.gpo.gov*.

The NRC is amending 10 CFR parts 170 and 171 as discussed below in Sections III. A. and B. of this document.

*A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended*

The NRC is establishing one hourly rate to recover the full cost of activities under part 170, and to use this rate to calculate ''flat'' application fees. This hourly rate of $258 has changed from $256 in the proposed fee rule. The increase is due to additional funding received by NRC under the Pub. L. 110–5 Revised Continuing Appropriations Resolution, 2007. Additionally, this rule revises the license application fees to (1) reflect the FY 2007 hourly rate and to comply with the requirement under the Chief Financial Officers (CFO) Act of 1990 (Pub. L. 101–578, November 15, 1990) that fees be reviewed biennially and revised as necessary to reflect the cost to the agency, (2) establish new flat fees for requests for exemptions from import/export licensing requirements, and (3) change facilities flat fees to full cost fees. It also establishes new fee

categories under § 170.31 and makes minor administrative changes for purposes of clarification and consistency.

*The NRC is making the following changes:*

1. Hourly Rate

The NRC is establishing in § 170.20 one professional hourly rate for NRC staff time. This is a change from the current policy of using two hourly rates, one for the Nuclear Reactor Safety (Reactor) Program, and one for the Nuclear Materials and Waste Safety (Materials) Program.

From FY 1988 through 1994, the NRC used one agency-wide professional hourly rate. In the FY 1995 fee rule (60 FR 32218; June 20, 1995), the NRC replaced the single rate with two professional hourly rates based on 'cost center concepts' used for budgeting purposes, to more closely align budgeted costs with specific fee classes. The average difference in hourly costs between the Reactor and Materials Programs has been small for a number of years. From FY 1998 through FY 2006, the average difference in these rates was approximately two percent. The NRC does not have reason to believe that these two rates will be notably different from each other in the future. Additionally, the NRC incurs administrative burden in calculating and billing two different hourly rates. Therefore, the NRC is returning to the use of one hourly rate.

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The FY 2007 hourly rate is $258. This rate is higher than the hourly rate of $256 in the proposed fee rule. The increase is due to additional funding provided NRC in the Pub. L. 110–5 Revised Continuing Appropriations Resolution, 2007. This rate is applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. In the FY 2006 final fee rule, the Reactor and Materials Program rates were $217 and $214, respectively.

The FY 2007 hourly rate is higher than the FY 2006 Reactors and Materials Program rates mainly because of a downward revision to the NRC's estimate of direct hours worked per FTE per year, which is used in the denominator of the hourly rate calculation (described in further detail later in this document). It is also higher due to Government-wide pay raises.

The NRC's single hourly rate is derived by dividing the sum of budgeted resources for (1) mission direct labor; (2) mission indirect (or program overhead) labor and non-labor activities (including mission direct travel); and (3) agency overhead labor and non-labor activities, by mission direct FTE hours. The only budgeted resources excluded from the hourly rate are those for mission direct non-labor (i.e., contract) activities. This method is consistent with the existing approach for calculating hourly rates for the Reactor and Materials Programs. The only difference is that the formula used to derive one average NRC hourly rate would be based on total NRC budgeted resources (excluding HLW, WIR, and generic homeland security), rather than using this same formula to calculate two rates based on resources allocated to the Reactor and Materials Programs.

As noted previously, the FY 2007 hourly rate is higher than the FY 2006 Reactors and Materials rates mainly due to a revision to the NRC's estimate of direct hours per FTE per year. The NRC last revised its estimate of direct hours worked annually per direct FTE in the FY 2005 final fee rule (70 FR 30525; May 26, 2005), when it began using an estimate of 1,446 hours. As explained in the FY 2005 final fee rule, this estimate is based on data from the NRC's time and labor system. The NRC has again reviewed data from its time and labor system to determine if this estimate requires updating for the FY 2007 fee rule. Based on this review of the most recent data available, the NRC determined that 1,287 is its best estimate of direct hours worked annually per FTE. This estimate excludes all non-mission direct hours, such as training, general administration, and leave. Because the NRC's hourly rates are calculated by dividing annual budgeted costs by the product of budgeted mission direct FTE and average annual direct hours per FTE, the lower the number of direct hours per FTE used in the calculation, the higher the hourly rates.

The NRC is updating its hourly rate calculation to reflect its latest estimate of direct hours per FTE to more accurately reflect the NRC's costs of providing part 170 services, which would allow the NRC to more fully recover the costs of these services through part 170 fees. The NRC believes that this is consistent with guidance provided in the Office of Management and Budget Circular A–25 on recovering the full cost of services provided to identifiable recipients. The resulting higher hourly rate would result in both increased full cost fees for licensing and inspection activities, and increased materials flat fees for license applications.

Because costs not recovered under part 170 are recovered through part 171 annual fees, the increase in total part 170 fees (caused by the hourly rate increase) would result in a reduction to total annual fees of the same amount. As such, this hourly rate increase would shift some fee recovery from part 171 annual fees to part 170 fees for licensee-specific services. This change supports industry comments that consistently recommend that the NRC collect more of its budget through part 170 fees-for-services rather than part 171 annual fees. (Because the invoices reflecting these increased part 170 fees will not be paid by licensees until FY 2008—in light of the effective date of the FY 2007 final rule and the timing of the NRC's regular billing cycle—the reduction in annual fees from this change would not occur until FY 2008).

Because annual fees are adjusted to recover the remainder of the budgeted resources for a license fee class not recovered under part 170, the total estimated fees (parts 170 plus 171) recovered from a license fee class would be the same regardless of the amount of the hourly rate. However, when implemented, higher hourly rates would result in some individual licensees paying less in total fees than if this change were not enacted. This is true for those licensees for whom the NRC performs fewer hours of part 170 services than it does, on average, for a licensee in that class. Similarly, licensees for which the NRC performs more hours of part 170 services will pay more in total fees under the higher hourly rate.

Table II shows the results of the hourly rate calculation methodology. Due to rounding, adding the individual numbers in the table may result in a total that is slightly different than the one shown.

TABLE II.—FY 2007 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

| | |
|---|---|
| Mission Direct Program Salaries & Benefits | $255.0M |
| Mission Indirect (Program Overhead) Salaries & Benefits, and Mission Direct Travel | 107.1M |
| Agency Management and Support | 247.8M |
| Subtotal | 609.9M |
| Less Offsetting Receipts | −0.1M |
| Total Budget Included in Hourly Rate | $609.8M |
| Mission Direct FTEs | 1,835 |
| Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE times 1,287 hours) | $258 |

As shown in Table II, dividing the $609.8 million budgeted amount (rounded) included in the hourly rate by total mission direct hours (1,835 FTE times 1,287 hours) results in an hourly rate of $258. The hourly rate is rounded to the nearest whole dollar.

2. ''Flat'' Application Fee Changes

a. Revised Flat Fees. The NRC is adjusting the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $258 and the results of the biennial review of part 170 fees required by the CFO Act of 1990. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the professional hourly rate for FY 2007.

To comply with the requirements of the CFO Act, the NRC has evaluated historical professional staff hours used to process a new license application for those materials users fee categories subject to flat application fees. This review also included new license and amendment applications for import and export licenses.

Evaluation of the historical data shows that fees based on the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current costs incurred in completing these licensing actions. The data for the average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2005 final fee rule. Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

As a result of the biennial review, the application fees for materials users are based on the average professional staff hours that reflect an increase in average time for new license applications for four of the 34 Materials Program fee categories, a decrease in average time for six fee categories, and the same average time for the remaining 24 fee categories. [Note that for fee category 3.H., the NRC used seven years of data (rather than five) to determine the average application hours to mitigate the significant fee 'swings' resulting from large changes to this estimate in the past two biennial reviews, which the NRC believes are more a function of data anomalies than substantive changes.] The average time for new license applications and amendments for export and import licenses increased for seven fee categories in §§ 170.21 and 170.31, and remained the same for the others. The reciprocity fee reflects a slight decrease in the average time supporting these licenses. The registration fee for general licensees (fee category 3.Q. under § 170.31) also decreased.

The higher hourly rate of $258 is the main reason for the increases in the application fees. Application fees for some fee categories (K.3., K.4., and K.5. under § 170.21; and 3.C., 3.N., 3.O., 15.C., 15.D., 15.E., 15.R., and 17 under § 170.31) also increase because of the results of the biennial review of fees, which showed an increase in average time to process these types of license applications. (As discussed in the FY 2006 final fee rule, the average hours to process a category 17 application are based on similar licenses of broad scope.)

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be ''de minimis.'' Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B, 15.A. through 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2007 final fee rule will be subject to the revised fees in the final rule.

b. Flat Fees for Import/Export License Exemption Requests. The NRC will charge part 170 flat fees for requests for exemptions from import/export licensing requirements. The same fees would apply to these requests for exemptions as apply to requests for import/export licenses, because the NRC incurs similar costs in reviewing a license application as it does in reviewing an exemption request. The NRC does not receive many requests for exemptions from import/export licensing requirements, but will assess part 170 fees for these requests to comply with IOAA direction to recover the full costs of the services it provides to identifiable recipients.

c. Change Facilities Flat Fees to Full Cost Fees. The NRC is eliminating the flat application fees in § 170.21 A (application for a nuclear power reactor construction permit), C (application for a test facility/research reactor/critical facility construction permit), D (application for a manufacturing license), and G (application for other production and utilization facility construction permit), and instead is charging full cost part 170 fees for these activities. Footnote 1 to § 170.21 is also modified to eliminate reference to provisions relating to these flat fees. The NRC is making this change because it does not have recent data on average professional hours associated with the review of these types of applications. Therefore, the NRC believes it is more appropriate to charge full cost fees for these types of activities.

The NRC is also eliminating fee category F, Advanced Reactors, in § 170.21. This is because applications of this type are already covered under other fee categories (e.g., fee category A, Nuclear Power Reactors). The definition of ''Advanced Reactor'' under § 170.3 is also eliminated.

3. New Fee Categories

The NRC is amending § 170.31 to establish a new fee category (2.A.(5)) for uranium water treatment facilities. The NRC recently received its first license application for this type of facility, and it is not covered by existing fee categories. Accordingly, the NRC charged this applicant full cost part 170 fees for reviewing its application under the ''special project'' fee category in § 170.31. Because the NRC is adding a fee category under § 171.16 to establish an annual fee for this type of facility (see Section III.B.4.b of this document), the NRC is also adding the same new fee category under § 170.31, to maintain consistency of the fee categories under parts 170 and 171. This new fee category under § 170.31 would state that these facilities are subject to full cost licensing and inspection fees.

The NRC is also proposing to update the fee amounts for some new and revised fee categories that were included in another NRC rulemaking. The NRC published a proposed rule on July 28, 2006 (71 FR 42951) titled, ''Requirements for Expanded Definition of Byproduct Material,'' which would amend its regulations to include jurisdiction over certain radium sources, accelerator-produced radioactive materials, and certain naturally occurring radioactive material, as required by the Energy Policy Act of 2005. This July 28, 2006, rule proposed the establishment of three new fee categories and the revision of one existing fee category. These new and revised fee categories would include activities not currently covered by the NRC's existing regulations, but would be covered by the July 28, 2006, proposed rule. As explained in that proposed rule (71 FR 42967), which was published before the effective date of the FY 2006 final fee rule, the fee

amounts quoted reflected FY 2005 rates and budgeted resources. The NRC revises its fees each year in light of the current fiscal year budget and other factors. Accordingly, this document provides the fee amounts for these new and revised fee categories based on the FY 2007 budget and hourly rates.

The new and revised fee categories included in the July 28, 2006, proposed rule on the expanded definition of byproduct material are not included in this FY 2007 final fee rule. This is because these new and revised fee categories will be finalized as part of the NRC's final rule on the expanded definition of byproduct material. The NRC expects to publish a final rule on the requirements for the expanded definition of byproduct material in the latter half of calendar year 2007.

The NRC's proposed rule on the expanded definition of byproduct material would establish a new fee category 3.R.(1), for individuals possessing quantities greater than the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5), but less than or equal to 10 times these quantities. That rule proposed that the application and annual fees for category 3.R.(1) be the same as those for fee category 8 under § 170.31, given the similarity in regulatory effort. The FY 2007 application and annual fees for the new fee category 3.R.(1) continue to be based on the level of effort for fee category 8, and are $590 and $2,100, respectively.

The proposed rule on the expanded definition of byproduct material would also establish a new fee category 3.R.(2), for individuals possessing quantities greater than 10 times the number of items or limits in 10 CFR 31.12(a)(3), (4), or (5). That rule proposed that the application and annual fees for category 3.R.(2) be the same as those for fee category 3.P. under § 170.31, given the similarity in regulatory effort. The FY 2007 application and annual fees for the new fee category 3.R.(2) continue to be based on the level of effort for fee category 3.P., and are $1,400 and $2,700, respectively.

Additionally, the proposed rule on expanding the definition of byproduct material would also establish a new fee category 3.S., for the production of accelerator-produced radioactive materials. That rule proposed that the application and annual fees for 3.S. be the same as those for fee category 3.C. under § 170.31, given the similarity in regulatory effort. The FY 2007 application and annual fees for fee category 3.C. are $8,000 and $11,900, respectively. The application and annual fees for fee category 3.S. are $8,000 and $10,900, respectively. The proposed fees for fee category 3.S. continue to be based on the level of effort associated with fee category 3.C. licensees. The proposed annual fee for category 3.S. is slightly less than that for category 3.C. because the category 3.S. fee does not include a portion of the low-level waste (LLW) surcharge, while the category 3.C. fee does. This is because the licensees in fee category 3.C. directly benefit from the NRC's LLW activities, but the licensees in fee category 3.S. do not. (The LLW surcharge is included only in part 171 annual fees, and therefore does not affect the part 170 application fees.)

Finally, the proposed rule on expanding the definition of byproduct material would revise the scope of fee category 3.B. to include licenses for repair, assembly, and disassembly of products containing radium-226. The FY 2007 application and annual fees for fee category 3.B. are $4,600 and $8,400, respectively.

Fees associated with the new and revised fee categories for the expanded definition of byproduct material will not be applicable until the effective date of the FY 2007 final fee rule (approximately early August 2007), or the effective date of the NRC's final rule on the expanded definition of byproduct material, whichever is later. FY 2007 fees will be applicable to those new fee categories as of that date. As mentioned previously, these fee amounts will be updated each year.

The specific application and inspection hours used in the part 170 and 171 fees for all categories of materials users licensees, are included in the publicly available work papers supporting this final rulemaking. The calculation method used to determine the annual fees for materials users is explained in Section III.B.4.g, Materials Users, of this document.

4. Administrative Amendments

The NRC is revising §§ 170.3 and 170.12 to clarify that unless otherwise specifically exempted, all specific services provided by the Commission are ''special projects'' for which full cost fees will be assessed under part 170. This is consistent with NRC's existing regulations and practice, but the revisions state this more clearly.

The NRC is also making other minor administrative changes. The NRC is eliminating the definitions for ''Indian organization'' and ''Indian tribe'' in § 170.3, because these terms are no longer used in part 170. In § 170.31, fee category 1.A.(2)(c) is modified to state that it includes all ''other'' licenses for fuel cycle activities under fee category 1.A.(2), including hot cell facilities. The NRC is also eliminating the reference to footnote 4 in § 170.31, fee categories 2.A.(2)(a), 2.A.(2)(b), and 2.A.(2)(c), as this footnote is not applicable to these fee categories. Footnote 1(b) under § 170.31 will be revised to eliminate the listing of all full cost fee categories to eliminate redundancy. Additionally, footnote 1(c) under § 170.31 will be revised to eliminate reference to amendments for licenses other than import and export licenses, as flat fees for other license amendments no longer apply. Finally, fee category 7.B. in § 170.31 is slightly modified so that the language describing this fee category is the same under both parts 170 and 171.

In summary, the NRC is making the following changes to 10 CFR part 170—

1. Establishing one FY 2007 professional hourly rate of $258 to use in assessing fees for specific services;

2. Revising the license application fees to (a) reflect the FY 2007 hourly rate and to comply with the CFO Act requirement that fees be reviewed biennially and revised as necessary to reflect the cost to the agency, (b) establish new flat fees for requests for exemptions from import/export licensing requirements, and (c) change facilities flat fees to full cost fees;

3. Establishing new fee categories under § 170.31; and

4. Making minor administrative changes for purposes of clarification and consistency.

*B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC*

The NRC is making the following changes to part 171: removing generic homeland security budgeted resources from the fee base; using its fee relief to reduce all licensees' annual fees and modifying some surcharge categories; codifying the NRC's policy regarding when the assessment of annual fees begins and establishing rebaselined annual fees based on the Pub. L. 110–5 Revised Continuing Appropriations Resolution, 2007; revising the way it prorates annual fees for materials licenses of $100,000 or more and establishing new fee categories; and making some minor administrative amendments under part 171. The final amendments are described below:

1. Removal of Generic Homeland Security Budgeted Resources From the Fee Base

As mentioned previously, beginning with this FY 2007 rulemaking, in accordance with the Energy Policy Act of 2005, the budgeted resources associated with generic homeland security activities are excluded from the NRC's fees each year. As a result, $33 million is removed from the NRC's required annual fee recovery in FY 2007. These funds cover generic homeland security activities such as rulemakings and guidance development. Under the NRC's authority under the IOAA, the NRC will continue to bill under part 170 for all licensee-specific homeland security-related services provided, including security inspections (which include force-on-force exercises) and security plan reviews.

2. Application of ''Fee Relief''/ Surcharge Changes

The NRC will be using its fee relief to reduce all licensees' annual fees, based on their percent of the budget. Additionally, the NRC is revising the activities included in the surcharge.

The NRC applies the 10 percent of its budget that it receives as fee relief under OBRA–90, as amended, to offset the costs of activities for which it does not charge fees or charges reduced fees. The costs of these ''surcharge'' activities are totaled, and then reduced by the amount of the NRC's fee relief. In prior years, any remaining surcharge costs were then allocated to all licensees' annual fees, based on their percent of the budget (i.e., over 80 percent was allocated to power reactors each year).

In FY 2007, the NRC's 10 percent fee relief exceeds the total surcharge costs by approximately $9.8 million. Therefore, the NRC will use this fee relief to reduce all licensees' annual fees, based on their percent of the budget authority. This is consistent with the existing fee methodology, in that the benefits of the NRC's fee relief are allocated to licensees in the same manner as costs were allocated when the NRC did not receive enough fee relief to pay for surcharge activities.

The NRC is also modifying some surcharge categories. First, the NRC is adding a new surcharge category in FY 2007 for the costs associated with a rulemaking on groundwater protection at in-situ leach (ISL) uranium extraction facilities. This change is in accordance with Commission Staff Requirements Memorandum COMJSM–06–0001, ''Regulation of Groundwater Protection at In Situ Leach Uranium Extraction Facilities'' (ML060830525). Second, the NRC is eliminating the surcharge category for specific services to other Federal agencies, because these agencies became subject to part 170 fees to recover the costs of these services as of the effective date of the FY 2006 final fee rule. Third, the NRC is eliminating the surcharge category for activities supporting unlicensed sites, because the NRC now charges part 170 fees to owners or operators of unlicensed sites in decommissioning (beginning July 25, 2006). All generic decommissioning resources associated with these sites have been allocated to the generic decommissioning/reclamation surcharge category. The budgeted resources associated with unregistered general licensees, previously included in the unlicensed sites surcharge category, are added to the new surcharge category that includes the ISL rulemaking.

Note the NRC is also modifying the way it calculates the resources included in the generic decommissioning/reclamation surcharge category, which includes decommissioning resources for all fee classes except power reactors and the spent fuel storage/reactor decommissioning fee class. This is not a substantive policy change, but rather a calculation method change that will result in a more accurate estimate of the actual costs of generic decommissioning/reclamation activities. In previous years, the budgeted resources allocated to each fee class included budgeted resources for site-specific decommissioning activities, and then the part 170 estimated decommissioning revenue was subtracted from each fee class. Beginning in FY 2007, all budgeted resources for decommissioning/ reclamation activities (for fee classes other than power reactors and spent fuel storage/reactor decommissioning) are initially allocated to the generic decommissioning/reclamation surcharge category. This total is then reduced by the total estimated part 170 decommissioning revenue from all licensees (other than those in the power reactor and spent fuel storage/reactor decommissioning fee classes). The NRC is explaining this change because it results in a reduction in both the total allocated budgeted resources and estimated part 170 revenue for the affected fee classes, which are shown in Section III.B.4, Revised Annual Fees, of this document.

The total budgeted resources for the NRC's surcharge activities in FY 2007 are $64.6 million. The NRC's total fee relief in FY 2007 is $74.4. million, leaving $9.8 million in fee relief to be used to reduce all licensees' annual fees. These values are shown in Table III (individual values may not sum to totals due to rounding).

TABLE III.—SURCHARGE COSTS

[Dollars in millions]

| Category of costs | FY 2007 budgeted costs |
|---|---|
| 1. Activities not attributable to an existing NRC licensee or class of licensee: | |
| a. International activities | $12.8 |
| b. Agreement State oversight | 9.2 |
| 2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy: | |
| a. Fee exemption for nonprofit educational institutions | 8.8 |
| b. Costs not recovered from small entities under 10 CFR 171.16(c) | 5.2 |
| 3. Activities supporting NRC operating licensees and others: | |
| a. Regulatory support to Agreement States | 11.2 |
| b. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes) | 14.8 |
| c. ISL rulemaking and unregistered general licensees | 2.6 |
| Total surcharge costs | 64.6 |
| Less 10 percent of NRC's FY 2007 total budget (less NWF, WIR, and generic homeland security acitvities) | −74.4 |
| Fee Relief to be Allocated to All Licensees' Annual Fees | −9.8 |

Table IV shows how the NRC is allocating the $9.8 million in fee relief to each license fee class (individual amounts may not sum to totals due to rounding). As explained previously, the NRC is allocating this fee relief to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee relief is used to partially offset the required annual fee recovery from each fee class. The revisions to §§ 171.15(d)(1) and 171.16(e) clarify that the surcharge allocated to annual fees may be negative, i.e., an annual fee reduction.

Separately, the NRC has continued to allocate the LLW surcharge costs based on the volume of LLW disposal of certain classes of licenses. Table IV also shows the allocation of the LLW surcharge. Because LLW activities support NRC licensees, the costs of these activities are not offset by the NRC's fee relief. For FY 2007, the LLW surcharge costs are $3.5 million. Because the allocated LLW surcharge exceeds the fee relief allocated to the materials users fee class, the annual fee recovery for this fee class includes a net addition to its annual fees for the surcharge costs.

TABLE IV.—ALLOCATION OF FEE RELIEF AND LLW SURCHARGE

| | LLW surcharge | | Fee relief surcharge (fee reduction) | | Total |
|---|---|---|---|---|---|
| | Percent | $M | Percent | $M | $M |
| Operating Power Reactors | 74 | 2.6 | 87.7 | −8.6 | −6.0 |
| Spent Fuel Storage/Reactor Decomm | | | 3.6 | −0.3 | −0.3 |
| Test and Research Reactors | | | 0.1 | 0 | 0 |
| Fuel Facilities | 8 | 0.3 | 4.9 | −0.5 | −0.2 |
| Materials Users | 18 | 0.6 | 3.2 | −0.3 | 0.3 |
| Transportation | | | 0.3 | 0 | 0 |
| Rare Earth Facilities | | | 0.0 | 0 | 0 |
| Uranium Recovery | | | 0.2 | 0 | 0 |
| Total Surcharge | 100 | 3.5 | 100.0 | −9.8 | −6.3 |

3. Codification of Policy Regarding When the Assessment of Annual Fees Begins

The NRC is modifying §§ 171.3 and 171.16 to codify its longstanding practice regarding when the assessment of annual fees begins for licensees subject to regulations that require a specific NRC authorization to operate subsequent to the NRC issuing the license. For these licensees, annual fees will not be assessed until the NRC grants this authorization. At the present time, this codification only affects new uranium enrichment licensees, as described further in this document. (The NRC's regulations already provide that part 52 combined operating license holders are not subject to annual fees until the Commission authorizes fuel load and operation of the reactor. This is also described further in this document.)

All other licensees will continue to be subject to annual fees at the time the license is issued. This is consistent with the policy that annual fees are assessed to licensees based on the benefits of receiving the NRC's authorization to operate, whether or not the licensee chooses to operate (with the exception of power reactors in decommissioning or possession only status, which are assessed annual fees if they have spent fuel onsite). Once a facility is authorized to operate, it continues to pay its annual fee(s) even if it shuts down for safety or other reasons and needs Commission approval to restart.

These amendments codify previous Commission decisions on this issue. The Commission first adopted this fee policy when it did not assess annual fees on those entities holding only a power reactor construction permit. The Commission indicated its intention to continue this policy when it included a provision in the FY 2002 final fee rule (67 FR 42611; June 24, 2002), which expanded the scope of part 171 to cover combined licenses authorizing operation of a power reactor (part 52 licenses). The Statement of Considerations for this June 2002 final rule further explained that an annual fee for part 52 licensees will only be assessed after construction has been completed, all regulatory requirements have been met, and the Commission authorizes operation of the reactor. Additionally, the NRC published a proposed rule on March 13, 2006 (71 FR 12781), ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' that included a provision that states that a combined license holder does not have to pay an annual fee until the Commission authorizes fuel load and operation. The Commission has approved for publication a final rule that includes this provision.

Other than part 52 licenses, a uranium enrichment facility is the only other current type of licensee subject to regulations that require a specific NRC authorization to operate subsequent to the NRC issuing the license. In the case of uranium enrichment facilities, this authorization occurs after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license, as required by 10 CFR 40.41(g) and 10 CFR 70.32(k). Therefore, the Commission is codifying its policy that annual fees for uranium enrichment facilities will be assessed at that time.

In the future, should the NRC amend its regulations to require specific authorizations for other types of licenses before the licensee may operate, the NRC will revise part 171 to explicitly state that these other types of licenses are also not subject to annual fees until the NRC grants the required authorization(s).

4. Revised Annual Fees

The NRC is revising its annual fees in §§ 171.15 and 171.16 for FY 2007 to recover approximately 90 percent of the NRC's FY 2007 budget authority (less the amounts appropriated from the NWF, and for WIR and generic homeland security activities), less the estimated amount to be recovered through part 170 fees. The part 170 estimates for this final rule increased by $11.7 million from the proposed fee rule based on the latest invoice data available. The total amount to be recovered through annual fees for FY 2007 decreased to $465.3 million compared to $471.5 million in the proposed fee rule primarily due to the increase in the part 170 estimates. The

required annual fee collection in FY 2006 was $441.7 million.

The NRC uses one of two methods to determine the amounts of the annual fees, for each type of licensee, established in its fee rule each year. One method is ''rebaselining,'' for which the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The second method is the ''percent change'' method, for which fees are revised based on the percent change in the total budget, taking into account other adjustments, such as the number of licensees and the projected revenue to be received from part 170 fees.

The NRC is establishing revised annual fees for FY 2007 using the rebaseline method because of significant budget changes in the areas of new reactor licensing and homeland security. As explained in the FY 2006 final fee rule, the Commission has determined that the agency should proceed with a presumption in favor of rebaselining in calculating annual fees each year, and that the percent change method should be used infrequently. This is because the Commission expects that most years there will be budget and other changes that warrant the use of the rebaseline method.

Rebaselining fees results in increased annual fees compared to FY 2006 for the power reactors, and decreased annual fees for six classes of licenses (spent fuel storage/reactor decommissioning, non-power reactors, fuel facilities, uranium recovery, rare earth, and transportation). Within the materials users fee class, annual fees for most of the categories (sub-classes) of licenses decrease, while annual fees for some increase or remain the same.

The most significant factors affecting the changes to the annual fee amounts are the increase in budgeted resources for new reactor activities, and the removal of generic homeland security resources from the fee base in accordance with the Energy Policy Act of 2005. The NRC's total fee recoverable budget, as mandated by law, is approximately $45.2 million larger in FY 2007 as compared to FY 2006. Because much of this increase is for the additional workload demand in the area of new reactor licensing, this increase mainly affects the operating power reactors' annual fees. Other factors affecting all annual fees include adjustments in the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2007) and the estimated part 170 collections for the various classes of licenses. The percentage of the NRC's budget not subject to fee recovery remained unchanged at ten percent from FY 2006 to FY 2007.

Table V shows the rebaselined annual fees for FY 2007 for a representative list of categories of licenses. The FY 2006 fee is also shown for comparative purposes.

TABLE V.—REBASELINED ANNUAL FEES FOR FY 2007

| Class/category of licenses | FY 2006 annual fee | FY 2007 annual fee |
|---|---|---|
| Operating Power Reactors (including Spent Fuel Storage/Reactor Decommissioning annual fee) | $3,704,000 | $4,043,000 |
| Spent Fuel Storage/Reactor Decommissioning | 173,000 | 159,000 |
| Test and Research Reactors (Non-power Reactors) | 80,100 | 76,300 |
| High Enriched Uranium Fuel Facility | 5,420,000 | 4,096,000 |
| Low Enriched Uranium Fuel Facility | 1,596,000 | 1,237,000 |
| $UF_6$ Conversion Facility | 1,046,000 | 811,000 |
| Conventional Mills | 65,900 | 18,700 |
| Typical Materials Users: | | |
| Radiographers | 15,400 | 14,100 |
| Well Loggers | 4,800 | 4,400 |
| Gauge Users (Category 3P) | 2,900 | 2,700 |
| Broad Scope Medical | 33,000 | 29,000 |

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. below. The work papers which support this rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2007 budgeted FTE and contract dollars allocated to each fee class and surcharge category at the planned activity and program level, and compare these allocations to those used to develop final FY 2006 fees. The work papers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html*. The work papers may also be examined at the NRC PDR located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, MD 20852–2738.

a. Fuel Facilities

The FY 2007 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16] is approximately $18.9 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170 collections and adjusted to reflect the net allocated surcharge, allocated generic transportation resources (see Section III.B.4.h, Transportation, of this document for further discussion), and billing adjustments. The summary calculations used to derive this value are presented in Table VI for FY 2007, with FY 2006 values shown for comparison purposes (individual values may not sum to totals due to rounding):

TABLE VI.—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Fuel Facility Fee Class | | |

TABLE VI.—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES—Continued

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Total budgeted resources | $39.6 | $32.2 |
| Less estimated part 170 receipts | −15.8 | −13.6 |
| Net part 171 resources | 23.8 | 18.6 |
| Plus allocated generic transportation | +0.4 | +0.5 |
| Allocated surcharge | +0.5 | −0.2 |
| Billing adjustments (including carryover) | +0.0 | +0.1 |
| Total required annual fee recovery | 24.8 | 18.9 |

The decrease in fuel facilities FY 2007 total budgeted resources compared to FY 2006 is due mostly to exclusion of homeland security generic activities from the fee base, as well as lower budgeted resources for certain activities. The part 170 revenue estimates for the final rule increased by 16 percent compared to the proposed rule due to increased billing for fuel facilities. This results in lower FY 2007 annual fees for fuel facilities in this final fee rule.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees based on the effort/fee determination matrix established in the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix (which is included in the NRC work papers that are publicly available), licensees are grouped into categories according to their licensed activities (i.e., nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate in such a way (e.g., decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/certificate holders.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/certificate holder may elect not to fully use a license/certificate, the license/certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Once the structure of the matrix is established, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste related activities (see the work papers for the complete list). Effort factors are assigned as follows: Zero (no regulatory effort), one (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). Note that the effort factors for the High Enriched Uranium Fuel fee category have changed from FY 2006. The safeguards factor increased in FY 2007 to reflect greater workload in the area of handling sensitive and classified information. The safety factor is lower in FY 2007 to reflect lower effort factors for pellet processing activities for this fee category. Taking into account both of these changes, the total safety and safeguards effort factor change is relatively small.

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES

| Facility type (fee category) | Number of facilities | Effort factors (percent of total) | |
|---|---|---|---|
| | | Safety | Safeguards |
| High Enriched Uranium Fuel | 2 | 91 (35.5) | 101 (53.4) |
| Uranium Enrichment | 2 | 70 (27.3) | 40 (21.2) |
| Low Enriched Uranium Fuel | 3 | 66 (25.8) | 21 (11.1) |
| $UF_6$ Conversion | 1 | 12 (4.7) | 7 (3.7) |
| Limited Operations | 1 | 8 (3.1) | 3 (1.6) |
| Gas Centrifuge Enrichment Demonstration | 1 | 3 (1.2) | 15 (7.9) |

TABLE VII.—EFFORT FACTORS FOR FUEL FACILITIES—Continued

| Facility type (fee category) | Number of facilities | Effort factors (percent of total) | |
|---|---|---|---|
| | | Safety | Safeguards |
| Hot Cell | 1 | 6 (2.3) | 2 (1.1) |

The budgeted resources for safety activities ($11,034,899) are allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is ten, that fee category will be allocated ten percent of the total budgeted resources for safety activities. Similarly, the budgeted resources for safeguards activities ($8,146,859) are allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The surcharge allocated to the fuel facility fee class (a fee reduction in FY 2007 of $196,419) is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table VIII.

TABLE VIII.—ANNUAL FEES FOR FUEL FACILITIES

| Facility type (fee category) | FY 2007 annual fee |
|---|---|
| High Enriched Uranium Fuel | $4,096,000 |
| Uranium Enrichment | 2,347,000 |
| Low Enriched Uranium | 1,237,000 |
| $UF_6$ Conversion | 811,000 |
| Gas Centrifuge Enrichment Demonstration | 768,000 |
| Limited Operations Facility | 469,000 |
| Hot Cell (and others) | 341,000 |

Note that the NRC issued a construction and operation license to a new uranium enrichment facility in June 2006. As explained in Section III.B.3, Codification of Policy Regarding When the Assessment of Annual Fees Begins, of this document, this facility would not be subject to annual fees until the Commission authorizes operation by verifying through inspection that the facility has been constructed in accordance with the requirements of the license, as required by 10 CFR 40.41(g) and 10 CFR 70.32(k). The annual fee applicable to any type of new uranium enrichment facility is the annual fee in § 171.16, fee category 1.E., Uranium Enrichment, unless the NRC establishes a new fee category for these facilities.

b. Uranium Recovery Facilities.

The total FY 2007 budgeted cost to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately $0.69 million. The derivation of this value is shown in Table IX, with FY 2006 values shown for comparison purposes. (Individual values may not sum to totals due to rounding.)

TABLE IX.—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Uranium Recovery Fee Class | | |
| Total budgeted resources | $2.34 | $1.32 |
| Less estimated part 170 receipts | −1.29 | −0.61 |
| Net part 171 resources | 1.05 | 0.71 |
| Plus allocated generic transportation | +N/A | +N/A |
| Allocated surcharge | +0.01 | −0.02 |
| Billing adjustments (including carryover) | +0.00 | +0.00 |
| Total required annual fee recovery | 1.06 | 0.69 |

The decrease in the total required annual fee recovery is mainly due to a reduction in uranium recovery licensing and inspection resources allocated to this fee class for fee recovery. One main reason for this reduction is the reallocation of uranium recovery licensing and inspection resources to a rulemaking on groundwater protection at ISL uranium extraction facilities. These resources are allocated to the surcharge in FY 2007, consistent with the Commission direction on this matter, as discussed in Section III.B.2, Application of 'Fee Relief'/Surcharge Changes, of this document. The part 170 revenue estimates for the final rule increased by approximately 44 percent compared to the proposed rule due to increased billing for uranium recovery facilities. This results in lower FY 2007 annual fees for uranium recovery facilities in this final fee rule.

Of the required annual fee collections, $584,000 would be assessed to the Department of Energy for its Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I and Title II licensees under fee category 18.B. The remaining $104,809 would be recovered through annual fees assessed to the other licensees in this fee class, i.e., conventional mills, in situ leach solution mining facilities, 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites), and a uranium water treatment facility.

The NRC is adding to the uranium recovery fee class a new fee category (2.A.(5) under § 171.16) for uranium water treatment facilities. This is because the NRC may license a facility of this type during FY 2007, and therefore is establishing the associated annual fee in this fee rule. The NRC is establishing a new fee category for this type of facility because the NRC has not previously licensed a facility of this

type, and none of the existing fee categories clearly cover this type of facility. Although included in the uranium recovery fee class, this type of facility is a separate fee category within this fee class. The methodology for calculating the annual fee for this type of facility is the same as that used for other facilities in this fee class, but different input values are used in the fee matrix to determine the actual fee amount for this facility (as described further in this document), resulting in a different fee amount for this new fee category.

In the FY 2002 final fee rule (67 FR 42611; June 24, 2002), the NRC established a fee recovery methodology for the uranium recovery fee class that would allocate the total annual fee amount for this fee class, less the amounts specifically budgeted for Title I activities, equally between DOE (for its UMTRCA Title I and Title II licensees) and the other licensees in this fee class. In this final rule, the NRC is slightly changing this methodology so that 45 percent of the total annual fee amount, less the amounts specifically budgeted for Title I activities, is allocated to DOE's UMTRCA annual fee. The remaining 55 percent of the total annual fee amount (less the amounts specifically budgeted for Title I activities) would be allocated to the other licensees in this fee class. The NRC is making this change because, as mentioned previously, the uranium recovery fee class includes a new type of facility in FY 2007 (fee category 2.A.(5), uranium water treatment). Because the resources associated with this new facility are less directly related to DOE UMTRCA activities than are the resources for other licensees in this fee class, the NRC believes it is appropriate to allocate a somewhat smaller percentage of the generic resources supporting this fee class to DOE.

This results in an annual fee being assessed to DOE to recover the costs specifically budgeted for NRC's Title I activities plus 45 percent of the remaining annual fee amount, including the surcharge and generic/other costs, for the uranium recovery class. The remaining 55 percent of the surcharge and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X.—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

| | |
|---|---|
| DOE Annual Fee Amount [Uranium Mill Tailings Radiation Control Act (UMTRCA) Title I and Title II general licenses]: | |
| UMTRCA Title I budgeted costs | $498,662 |
| 45 percent of generic/other uranium recovery budgeted costs | 93,910 |
| 45 percent of uranium recovery surcharge | −8,157 |
| Total Annual Fee Amount for DOE (rounded) | 584,000 |
| Annual Fee Amount for Other Uranium Recovery Licenses: | |
| 55 percent of generic/other uranium recovery budgeted costs | 114,779 |
| 55 percent of uranium recovery surcharge | −9,970 |
| Total Annual Fee Amount for Other Uranium Recovery Licenses | 104,809 |

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with regulating the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the $104,809 annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2007 matrix, which includes some modifications from the FY 2006 matrix, and the methodology using this matrix, is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2007, these categories are conventional uranium mills (Class I facilities), uranium solution mining facilities (Class II facilities), mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities. The uranium water treatment facility is a new fee category in the uranium recovery fee class in FY 2007, as mentioned previously.

Second, the matrix identifies the types of operating activities that support these licensees. In FY 2007, the activities related to generic decommissioning/reclamation are no longer included in the matrix, because generic decommissioning/reclamation activities are included in the surcharge, and therefore need not be a factor in determining annual fees. The activities included in the FY 2007 matrix are 'operations,' 'waste operations,' and 'groundwater remediation.' The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The 'operations,' 'waste operations,' and 'groundwater remediation' activities have weights of 10, 5, and 10, respectively, in the FY 2007 matrix.

Once the structure of the matrix is established, the NRC's uranium recovery project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fee category, separate effort factors for each type of regulatory activity in the matrix. Effort factors are assigned as follows: Zero (no regulatory effort), two (minor regulatory effort), five (some regulatory effort), and ten (significant regulatory effort). These effort factors are first multiplied by the relative weight assigned to each activity (described previously). Total effort factors by fee category, and per licensee in each fee category, are then calculated. These effort factors thus reflect the relative regulatory effort associated with each licensee and fee category.

The effort factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI.—EFFORT FACTORS FOR URANIUM RECOVERY LICENSES

| Fee category | Number of licensees | Effort factor per licensee | Total effort factor | |
|---|---|---|---|---|
| | | | Value | Percent total |
| Class I (conventional mills) | 1 | 75 | 75 | 18 |

TABLE XI.—EFFORT FACTORS FOR URANIUM RECOVERY LICENSES—Continued

| Fee category | Number of licensees | Effort factor per licensee | Total effort factor | |
|---|---|---|---|---|
| | | | Value | Percent total |
| Class II (solution mining) | 3 | 75 | 225 | 54 |
| 11e.(2) disposal | 0 | 0 | 0 | 0 |
| 11e.(2) disposal incidental to existing tailings sites | 1 | 75 | 75 | 18 |
| Uranium water treatment | 1 | 45 | 45 | 11 |

The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table XI. Applying these factors to the approximately $105,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the following annual fees for FY 2007:

TABLE XII.—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES (OTHER THAN DOE)

| Facility type | FY 2007 annual fee |
|---|---|
| Class I (conventional mills) | $18,700 |
| Class II (solution mining) | 18,700 |
| 11e.(2) disposal | N/A |
| 11e.(2) disposal incidental to existing tailings sites | 18,700 |
| Uranium water treatment | 11,200 |

Note because there are no longer any 11e.(2) disposal facilities under the NRC's regulatory jurisdiction, the NRC has not allocated any budgeted resources for these facilities, and therefore has not established an annual fee for this fee category. If NRC issues a license for this fee category in the future, then the Commission will establish the appropriate annual fee.

c. Operating Power Reactors

The approximately $404 million in budgeted costs to be recovered through FY 2007 annual fees assessed to the power reactor class was calculated as shown in Table XIII. (FY 2006 values shown for comparison purposes; individual amounts may not sum to totals due to rounding.)

TABLE XIII.—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Operating Power Reactors Fee Class: | | |
| Total budgeted resources | $515.9 | $588.6 |
| Less estimated part 170 receipts | −155.2 | −180.7 |
| Net part 171 resources | 360.7 | 407.9 |
| Plus allocated transportation | +0.8 | +1.0 |
| Allocated surcharge | +5.5 | −6.0 |
| Billing adjustments (including carryover) | +0.2 | +1.1 |
| Total required annual fee recovery | 367.2 | 404.0 |

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in an FY 2007 annual fee of $3,884,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2007 spent fuel storage/reactor decommissioning annual fee of $159,000. This results in a total FY 2007 annual fee of $4,043,000 for each power reactor licensed to operate.

The annual fee for power reactors increases in FY 2007 compared to FY 2006 due to an increase in budgeted resources for a number of activities, including regulatory infrastructure for new reactor licensing activities and preparations for future combined license applications. This increase is partially offset by the exclusion of generic homeland security activities from the fee base and higher estimated part 170 collections. Compared to FY 2006, the NRC estimates an increase in part 170 collections of about 16 percent for this fee class in FY 2007. These collections offset the required annual fee recovery amount by a total of approximately $180.7 million.

The annual fees for power reactors are presented in § 171.15. As discussed previously in Section III.B.3, Codification of Policy Regarding When the Assessment of Annual Fees Begins, of this document, the NRC recently published a proposed rulemaking (''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' 71 FR 12782; March 13, 2006) that includes a provision that states that a combined license holder does not have to pay an annual fee until the Commission authorizes fuel load and operation.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2007, budgeted costs of approximately $19.6 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. (FY 2006 values shown for comparison purposes; individual values may not sum to totals due to rounding.)

TABLE XIV.—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Spent Fuel Storage/Reactor—Decommissioning Fee Class | | |
| Total budgeted resources | $26.6 | $23.9 |
| Less estimated part 170 receipts | −5.8 | −4.2 |
| Net part 171 resources | 20.8 | 19.7 |
| Plus allocated generic transportation | +0.2 | +0.3 |
| Allocated surcharge | +0.2 | −0.4 |
| Billing adjustments (including carryover) | +0.0 | +0.0 |
| Total required annual fee recovery | 21.2 | 19.6 |

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2007 annual fee of $159,000 per licensee. The value of total budgeted resources for this fee class decreased in FY 2007 compared to FY 2006 due to a decrease in the budgeted resources for decommissioning activities and the exclusion of generic homeland security activities from the fee base.

e. Test and Research Reactors (Non-Power Reactors)

Approximately $305,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2007. Table XV summarizes the annual fee calculation for test and research reactors for FY 2007. (FY 2006 values shown for comparison purposes; individual values may not sum to totals due to rounding.)

TABLE XV.—ANNUAL FEE SUMMARY CALCULATIONS FOR TEST AND RESEARCH REACTORS

[Dollars in millions]

| Summary fee calculations/ test and research reactors fee class | FY 2006 final | FY 2007 final |
|---|---|---|
| Total budgeted resources | $0.88 | $0.85 |
| Less estimated part 170 receipts | −0.57 | −0.55 |
| Net part 171 resources | 0.31 | 0.30 |
| Plus allocated generic transportation | +0.01 | +0.01 |
| Allocated surcharge | +0.01 | −0.01 |
| Billing adjustments (including carryover) | +0.00 | +0.00 |
| Total required annual fee recovery | 0.32 | 0.31 |

This required annual fee recovery amount is divided equally among the 4 test and research reactors subject to annual fees, and results in a FY 2007 annual fee of $76,300 for each licensee. The decrease in annual fees from FY 2006 to FY 2007 is due to decrease in budget resources for licensing activities for test and research reactors class. The part 170 revenue estimates for the final fee rule increased by approximately 14 percent compared to the proposed fee rule due to increased billing for test and research reactors including federal facilities. The Energy Policy Act of 2005 authorized the NRC to bill federal facilities for part 170 services.

f. Rare Earth Facilities

The FY 2007 budgeted costs of $90,158 for rare earth facilities (fee category 2.A.(2)(c) under § 171.16) to be recovered through annual fees will be assessed to one licensee who has a specific license for receipt and processing of source material, resulting in a FY 2007 annual fee of $90,200. Table XVI summarizes the annual fee calculation for the rare earth fee class for FY 2007. (FY 2006 values shown for comparison purposes; individual values may not sum to totals due to rounding.)

TABLE XVI.—ANNUAL FEE SUMMARY CALCULATIONS FOR RARE EARTH FACILITIES

[Dollars in millions]

| Summary fee calculations | FY 2006 final | FY 2007 final |
|---|---|---|
| Rare Earth Fee Class | | |
| Total budgeted resources | $0.831 | $0.101 |
| Less estimated part 170 receipts | −0.740 | −0.010 |
| Net part 171 resources | 0.091 | 0.091 |
| Plus allocated generic transportation | +N/A | +N/A |
| Allocated surcharge | +0.005 | −0.001 |
| Billing adjustments (including carryover) | +0.000 | +0.000 |
| Total required annual fee recovery | 0.096 | 0.090 |

The total allocated resources for this fee class decreased in FY 2007 compared to FY 2006, primarily due to a decrease in budgeted resources for licensing activities.

g. Materials Users

Table XVII shows the calculation of the FY 2007 annual fee amount for materials users licensees. (FY 2006 values shown for comparison purposes; individual values may not sum to totals due to rounding.) Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17.

TABLE XVII.—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

| Summary fee calculations/materials users | FY 2006 final | FY 2007 final |
|---|---|---|
| Fee Class | | |
| Total budgeted resources | $30.3 | $25.8 |
| Less estimated part 170 receipts | −2.0 | −1.2 |
| Net part 171 resources | 28.2 | 24.6 |
| Plus allocated generic transportation | +0.6 | +0.9 |
| Plus allocated surcharge | +0.8 | +0.3 |
| Billing adjustments (including carryover) | +0.0 | +0.0 |
| Total required annual fee recovery | 29.6 | 25.9 |

The total required annual fees to be recovered from materials licensees decreased in FY 2007 mainly because of the exclusion of generic homeland security activities from the fee base, as well as decreases in the budgeted resources allocated to this fee class for activities such as decommissioning and materials information technology.

To equitably and fairly allocate the $25.9 million in FY 2007 budgeted costs to be recovered in annual fees assessed to the approximately 4,400 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on how much it costs the NRC to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $18.3 million in general costs (including allocated generic transportation costs) and is 0.93 for FY 2007. The average inspection cost is the average inspection hours for each fee category times the hourly rate of $258. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $7.2 million in inspection costs, and is 1.55 for FY 2007. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2007, approximately $156,000 in budgeted costs for the implementation of revised 10 CFR part 35, Medical Use of Byproduct Material (unique costs), has been allocated to holders of NRC human use licenses.

The annual fee to be assessed to each licensee also includes a share of the $313,000 in fee relief allocated to the materials users fee class (see Section III.B.2, Application of ''Fee Relief''/ Surcharge Changes, of this document), and for certain categories of these licensees, a share of the approximately $626,000 in LLW surcharge costs allocated to the fee class.

The annual fee for each fee category is shown in § 171.16(d). Annual fees for most fee categories within the materials users fee class decrease, while some increase or remain the same. As indicated previously, changes in the FY 2007 annual fees for categories of licensees within the materials users fee class reflect not only changes in the budgeted resources supporting this fee class, but also changes in the estimates of average professional staff time for materials users license applications and inspections, derived from the biennial review performed for the FY 2007 fee rule (see discussion of the biennial review under Section III.A.2, Flat Application Fee Changes, of this document). Accordingly, the relatively large percentage decrease in the annual fee for fee category 3.H under § 171.16 is the result of a significant decrease to the average professional staff time estimates.

h. Transportation

Table XVIII shows the calculation of the FY 2007 generic transportation budgeted resources to be recovered through annual fees. (FY 2006 values shown for comparison purposes.)

TABLE XVIII.—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

| Summary fee calculations/transportation | FY 2006 final | FY 2007 final |
|---|---|---|
| Fee Class: | | |
| Total budgeted resources | $6.3 | $5.0 |
| Less estimated part 170 receipts | −1.2 | −1.2 |
| Net part 171 resources (required annual fee recovery) | 5.1 | 3.8 |

The total FY 2007 budgeted resources for generic transportation activities, including those to support DOE Certificates of Compliance (CoCs), is $3.8 million. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate surcharge category (e.g., the surcharge category for nonprofit educational institutions). The budgeted resources for these activities decreased from FY 2006 to FY 2007, mostly due to the removal of generic homeland security activities from the fee base.

Consistent with the policy established in the NRC's FY 2006 final fee rule, the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities.

These resources are distributed to DOE (to be included in its annual fee under fee category 18.A. of § 171.16) and each license fee class based on the CoCs used by DOE and each fee class, as a proxy for the generic resources expended for each fee class. As such, the amount of the generic resources allocated is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered.

The distribution of these resources to the license fee classes and DOE is shown in Table XIX (individual values may not sum to totals due to rounding). The distribution is adjusted to account for the licensees in each fee class that are fee exempt. For example, if 3 CoCs benefit the entire test and research reactor class, but only 4 of 30 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals ((4/30)*3), or 0.4 CoCs.

TABLE XIX.—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2007

[Dollars in millions]

| License fee class/DOE | Number CoCs benefitting fee class (or DOE) | Percentage of total CoCs (percent) | Allocated generic transportation resources |
|---|---|---|---|
| Total | 131 | 100 | $3.80 |
| DOE | 35 | 26.8 | 1.00 |
| Operating Power Reactors | 36 | 27.5 | 1.03 |
| Spent Fuel Storage/Reactor Decommissioning | 9 | 6.9 | 0.26 |
| Test and Research Reactors | 0.4 | 0.3 | 0.01 |
| Fuel Facilities | 19 | 14.5 | 0.55 |
| Materials Users | 31.4 | 24 | 0.90 |

The NRC will continue to assess DOE an annual fee based on the part 71 CoCs it holds, and not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's annual fee includes a reduction for the fee relief (see Section III.B.2, Application of ''Fee Relief''/Surcharge Changes, of this document), resulting in a total annual fee of $976,000 for FY 2007. This fee decrease from last year is primarily due to exclusion of homeland security activities from the fee base.

5. Prorating Annual Fees

The NRC is revising the annual fee proration provisions for certain materials licenses. Section 171.17(b) currently states that new licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY, and that new licenses issued from October 1 to March 31 will be assessed one-half the annual fee for that FY. As explained in § 171.17(b), similar proration provisions also apply to applications for license terminations and requests for downgraded licenses.

The NRC is revising the annual fee proration provisions for new licenses, license terminations, and downgraded licenses, for all materials licensees subject to an annual fee of $100,000 or more for a single fee category. For these licenses, annual fees for new, terminated, or downgraded licenses will be based on the number of days in the FY the license was in effect. This is consistent with the proration provisions for reactors and part 72 licensees who do not hold part 50 licenses, as established in § 171.17(a). The NRC is making this change because it believes it is more fair to prorate all fees over $100,000 in the same manner, regardless of whether the fee is associated with a power reactor, part 72 licensee, or materials licensee.

6. New Fee Categories

As discussed in Sections III.A.3, New Fee Categories, and III.B.4.b, Uranium Recovery Facilities, of this document, the NRC is amending § 171.16 to establish a new fee category (2.A.(5)) for uranium water treatment facilities. The NRC recently received its first application for this type of license which is not covered by existing fee categories.

Also as discussed in Section III.A.3, New Fee Categories, of this document, the NRC is updating the fee amounts for some new and revised proposed fee categories that were included in another NRC rulemaking, ''Requirements for Expanded Definition of Byproduct Material'' (71 FR 42952; July 28, 2006). Section III.A.3 includes both the FY 2007 part 170 and part 171 fees for these new and revised fee categories, as well as the explanation for the need for these new fee categories.

Fees associated with the new and revised fee categories for the expanded definition of byproduct material will not be applicable until the effective date of the FY 2007 final fee rule (approximately early August 2007), or the effective date of the NRC's final rule on the expanded definition of byproduct material, whichever is later. FY 2007 fees will be applicable to those new fee categories as of that date. As mentioned previously, these fee amounts will be updated each year.

Note the specific application and inspection hours used in the part 170 and 171 fees for all categories of materials users licensees are included in the publicly available workpapers supporting this rulemaking. The calculation method used to determine materials users annual fees is explained in Section III.B.4.g, Materials Users, of this document.

7. Administrative Amendments

The NRC is modifying § 171.15(b)(2)(iii) to clarify that the types of activities included in the power reactor annual fees include generic activities for new reactors. This is not a policy change, but rather a clarification

of existing policy. Further, the NRC is revising § 171.15(d)(1)(iii) to eliminate reference to Federal agency activities being included in the surcharge, because these activities are now recovered through part 170 fees to Federal agencies or included in other surcharge categories. Additionally, the NRC is modifying the last sentence of footnote 1 under § 171.16 to clarify that licensees paying fees under categories 1.A. and 1.E. are not subject to fees under categories 1.C. and 1.D. for sealed sources authorized in the same license. This is to enhance the consistency of this footnote to a similar footnote in § 170.31 (footnote 4). Finally, fee category 1.A.(2)(c) is modified to state that it includes all 'other' licenses for fuel cycle activities under 1.A.(2), including hot cell facilities, consistent with this same change for fee category 1.A.(2)(c) under part 170.

In summary, the NRC is—

1. Removing generic homeland security resources from the fee base, beginning in FY 2007, to comply with the Energy Policy Act of 2005;

2. Using the NRC's fee relief to all licensees' annual fees, based on their percent of the NRC budget, and make changes to certain surcharge categories;

3. Modifying §§ 171.3 and 171.16 to codify its policy regarding when the assessment of annual fees begins;

4. Establishing rebaselined annual fees for FY 2007;

5. Revising the annual fee proration provisions for new, terminated, and downgraded materials licenses;

6. Establishing some new fee categories to cover new NRC activities; and

7. Making certain administrative changes for purposes of clarification and consistency.

## IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2007 as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the final regulation. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

## VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

## VII. Regulatory Analysis

With respect to 10 CFR part 170, this final rule was developed under Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954 and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed OBRA–90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriation Act (EWDAA) amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent beginning in FY 2007. As a result, the NRC is required to recover approximately 90 percent of its FY 2007 budget authority, less the amounts appropriated from the NWF, WIR, and generic homeland security activities through fees. To comply with this statutory requirement and in accordance with § 171.13, the NRC is publishing the amount of the FY 2007 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees be based on approximately 90 percent of the Commission's FY 2007 budget of $824.9 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program and for

WIR and generic homeland security activities, and less the amount of funds collected from part 170 fees;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

10 CFR part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

## VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990, as amended, to recover approximately 90 percent of its FY 2007 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This final rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2007. This rule will result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this final rule.

The Congressional Review Act of 1996 requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2007.

## IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and that a backfit analysis is not required for this final rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

## X. Congressional Review Act

In accordance with the Congressional Review Act of 1996, Pub. L. 104–121, the NRC has determined that this action is a major rule and has verified the determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

## List of Subjects

*10 CFR Part 170*

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

*10 CFR Part 171*

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 170 and 171.

## PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

■ 1. The authority citation for part 170 continues to read as follows:

**Authority:** Sec. 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109–58, 119 Stat. 783, (42 U.S.C. 2201(w)).

■ 2. In § 170.3, the definitions of *Advanced reactor, Indian organization,* and *Indian tribe* are removed, and the definition of Special projects is revised as follows:

**§ 170.3 Definitions.**

* * * * *

*Special projects* means specific services provided by the Commission for which fees are not otherwise specified in this chapter. This includes, but is not limited to, contested hearings on licensing actions directly related to U.S. Government national security initiatives (as determined by the NRC), topical report reviews, early site reviews, waste solidification activities, activities related to the tracking and monitoring of shipment of classified matter, services provided to certify licensee, vendor, or other private industry personnel as instructors for 10 CFR part 55 reactor operators, reviews of financial assurance submittals that do not require a license amendment, reviews of responses to Confirmatory Action Letters, reviews of uranium recovery licensees' land-use survey reports, and reviews of 10 CFR 50.71 final safety analysis reports. Special projects does not include activities otherwise exempt from fees under this part. It also does not include those contested hearings for which a fee exemption is granted in § 170.11(a)(2), including those related to individual plant security modifications.

* * * * *

■ 3. In § 170.12, paragraphs (d)(1) and (d)(2) are revised as follows:

**§ 170.12 Payment of fees.**

* * * * *

(d) * * *

(1) All special projects performed by the Commission, unless otherwise exempt from fees or for which fees are otherwise specified in this part, will be assessed fees to recover the full cost of the service provided. Special projects means specific services provided by the Commission, including but not limited to—

(i) Topical reports;

(ii) Financial assurance submittals that do not require a license amendment;

(iii) Responses to Confirmatory Action Letters;

(iv) Uranium recovery licensees' land-use survey reports;

(v) 10 CFR 50.71 final safety analysis reports; and

(vi) Contested hearings on licensing actions directly involving U.S. Government national security initiatives, as determined by the NRC.

(2) The NRC intends to bill each applicant or licensee at quarterly intervals until the special project is completed. Each bill will identify the special project, including any documents submitted for review or the

specific contested hearing, and the related costs. The fees are payable upon notification by the Commission.

* * * * *

■ 4. Section 170.20 is revised to read as follows:

**§ 170.20 Average cost per professional staff-hour.**

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 re-qualification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $258 per hour.

■ 5. In § 170.21, in the table, fee category F is removed and reserved, and fee categories A, C, D, G, and K, and footnote 1, are revised to read as follows:

**§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.**

* * * * *

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

| Facility categories and type of fees | Fees [1] [2] |
|---|---|
| A. Nuclear Power Reactors: | |
| Application for Construction Permit | Full Cost. |
| Early Site Permit, Construction Permit, Combined License, Operating License | Full Cost. |
| Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals | Full Cost. |
| Inspections [3] | Full Cost. |
| * * * * * * * | |
| C. Test Facility/Research Reactor/Critical Facility: | |
| Application for Construction Permit | Full Cost. |
| Construction Permit, Operating License | Full Cost. |
| Amendment, Renewal, Dismantling-Decommissioning and Termination, Other Approvals | Full Cost. |
| Inspections [3] | Full Cost. |
| * * * * * * * | |
| D. Manufacturing License: | |
| Application for Construction Permit | Full Cost. |
| Preliminary Design Approval, Final Design Approval | Full Cost. |
| Amendment, Renewal, Other Approvals | Full Cost. |
| Inspections [3] | Full Cost. |
| * * * * * * * | |
| F. [Reserved] | |
| G. Other Production and Utilization Facility: | |
| Application for Construction Permit | Full Cost. |
| Construction Permit, Operating License | Full Cost. |
| Amendment, Renewal, Other Approvals | Full Cost. |
| Inspections [3] | Full Cost. |
| * * * * * * * | |
| K. Import and export licenses: | |
| Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR part 110. | |
| 1. Application for import or export of production and utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b). | |
| Application—new license, or amendment; or license exemption request | $16,800. |
| 2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8). | |
| Application—new license, or amendment; or license exemption request | $9,800. |
| 3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances. | |
| Application—new license, or amendment; or license exemption request | $4,100. |
| 4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances. | |
| Application—new license, or amendment; or license exemption request | $2,600. |
| 5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities. | |
| Minor amendment to license | $770. |

[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[3] Inspections covered by this schedule are both routine and non-routine safety and safeguards inspections performed by NRC for the purpose of review or follow-up of a licensed program. Inspections are performed through the full term of the license to ensure that the authorized activities are being conducted in accordance with the Atomic Energy Act of 1954, as amended, other legislation, Commission regulations or orders, and the terms and conditions of the license. Non-routine inspections that result from third-party allegations will not be subject to fees.

[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

■ 6. In § 170.31, the table is revised to read as follows:

**§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.**

* * * * *

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2] [3] |
|---|---|
| 1. Special nuclear material: | |
| A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities. | |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) | Full Cost. |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel | Full Cost. |
| (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities. | |
| (a) Facilities with limited operations | Full Cost. |
| (b) Gas centrifuge enrichment demonstration facilities | Full Cost. |
| (c) Others, including hot cell facilities | Full Cost. |
| B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI). | Full Cost. |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4] | |
| Application | $1,200. |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4] | |
| Application | $2,400. |
| E. Licenses or certificates for construction and operation of a uranium enrichment facility | Full Cost. |
| 2. Source material: | |
| A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride | Full Cost. |
| (2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode. | |
| (a) Class I facilities | Full Cost. |
| (b) Class II facilities | Full Cost. |
| (c) Other facilities | Full Cost. |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4). | Full Cost. |
| (4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2). | Full Cost. |
| (5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water. | Full Cost. |
| B. Licenses which authorize the possession, use, and/or installation of source material for shielding. | |
| Application | $280. |
| C. All other source material licenses. | |
| Application | $10,200. |
| 3. Byproduct material: | |
| A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. | |
| Application | $12,100. |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution. | |
| Application | $4,600. |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2 3] |
|---|---|
| C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3.D. | |
| Application | $8,000. |
| D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). | |
| Application | $4,400. |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units). | |
| Application | $3,000. |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. | |
| Application | $6,000. |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes. | |
| Application | $14,400. |
| H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. | |
| Application | $10,600. |
| I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter. | |
| Application | $10,500. |
| J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. | |
| Application | $1,900. |
| K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter. | |
| Application | $1,100. |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution. | |
| Application | $10,200. |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution. | |
| Application | $3,600. |
| N. Licenses that authorize services for other licensees, except: | |
| (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and | |
| (2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C. | |
| Application | $6,600. |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. | |
| Application | $4,900. |
| P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. | |
| Application | $1,400. |
| Q. Registration of a device(s) generally licensed under part 31 of this chapter. | |
| Registration | $320. |
| 4. Waste disposal and processing: | |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. | Full Cost. |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. | |
| Application | $3,100. |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2 3] |
|---|---|
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material. | |
| Application | $4,600. |
| 5. Well logging: | |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies. | |
| Application | $1,700. |
| B. Licenses for possession and use of byproduct material for field flooding tracer studies. | |
| Licensing | Full Cost. |
| 6. Nuclear laundries: | |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material. | |
| Application | $20,600. |
| 7. Medical licenses: | |
| A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. | |
| Application | $11,300. |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license. | |
| Application | $8,100. |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. | |
| Application | $2,500. |
| 8. Civil defense: | |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities. | |
| Application | $590. |
| 9. Device, product, or sealed source safety evaluation. | |
| A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution. | |
| Application—each device | $21,100. |
| B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices. | |
| Application—each device | $21,100. |
| C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution. | |
| Application—each source | $2,900. |
| D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel. | |
| Application—each source | $980. |
| 10. Transportation of radioactive material: | |
| A. Evaluation of casks, packages, and shipping containers. | |
| 1. Spent Fuel, High-Level Waste, and plutonium air packages | Full Cost. |
| 2. Other Casks | Full Cost. |
| B. Quality assurance program approvals issued under part 71 of this chapter. | |
| 1. Users and Fabricators. | |
| Application | $4,800. |
| Inspections | Full Cost. |
| 2. Users. | |
| Application | $4,800. |
| Inspections | Full Cost. |
| C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices). | Full Cost. |
| 11. Review of standardized spent fuel facilities | Full Cost. |
| 12. Special projects: | |
| Including approvals, preapplication/licensing activities, and inspections | Full Cost. |
| 13. A. Spent fuel storage cask Certificate of Compliance | Full Cost. |
| B. Inspections related to storage of spent fuel under § 72.210 of this chapter | Full Cost. |
| 14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter. | Full Cost. |
| B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed. Part 170 fees for these activities will not be charged until July 25, 2006. | Full Cost. |
| 15. Import and Export licenses: | |
| Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E.). | |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2 3] |
|---|---|
| A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b). | |
| Application—new license, or amendment; or license exemption request | $16,800. |
| B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc. | |
| Application—new license, or amendment; or license exemption request | $9,800. |
| C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances. | |
| Application—new license, or amendment; or license exemption request | $4,100. |
| D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures. | |
| Application—new license, or amendment; or license exemption request | $2,600. |
| E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities. | |
| Minor amendment | $770. |
| Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).[5] | |
| *Category 1 Exports:* | |
| F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4). | |
| Application—new license, or amendment; or license exemption request | $16,800. |
| G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent. | |
| Application—new license, or amendment; or license exemption request | $9,800. |
| H.Application for export of Category 1 materials requiring Commission review and government-to-government consent. | |
| Application—new license, or amendment; or license exemption request | $6,200. |
| I. Application for export of Category 1 material requiring government-to-government consent. | |
| Application—new license, or amendment; or license exemption request | $5,200. |
| *Category 2 Exports:* | |
| J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4). | |
| Application—new license, or amendment; or license exemption request | $16,800. |
| K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review. | |
| Application—new license, or amendment; or license exemption request | $9,800. |
| L. Application for the export of Category 2 materials. | |
| Application—new license, or amendment; or license exemption request | $4,600. |
| *Category 1 Imports:* | |
| M. Application for the import of Category 1 material requiring Commission review. | |
| Application—new license, or amendment; or license exemption request | $4,900. |
| N. Application for the import of Category 1 material. | |
| Application—new license, or amendment; or license exemption request | $4,100. |
| *Category 2 Imports:* | |
| O. Application for the import of Category 2 material. | |
| Application—new license, or amendment; or license exemption request | $3,600. |
| *Category 1 Imports with Agent and Multiple Licensees:* | |
| P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review. | |
| Application—new license, or amendment; or license exemption request. | $5,700. |
| Q . Application for the import of Category 1 material with agent and multiple licensees. | |
| Application—new license, or amendment; or license exemption request | $4,600. |
| *Minor Amendments (Category 1 and 2 Export and Imports):* | |
| R. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities. | |
| Minor amendment | $770. |
| 16. Reciprocity: | |
| Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20. | |
| Application | $1,500. |
| 17. Master materials licenses of broad scope issued to Government agencies: | |
| Application | $23,900. |
| 18. Department of Energy: | |
| A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages). | Full Cost. |

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

| Category of materials licenses and type of fees [1] | Fee [2 3] |
|---|---|
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities | Full Cost. |

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, pre-application consultations and reviews of other documents submitted to NRC for review, and project manager time for fee categories subject to full cost fees, are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] For a combined import and export license application for material listed in Appendix P to part 110 of this chapter, only the higher of the two applicable fee amounts must be paid.

## PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

■ 7. The authority citation for part 171 continues to read as follows:

**Authority:** Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 8. Section 171.3 is revised to read as follows:

### § 171.3 Scope.

The regulations in this part apply to any person holding an operating license for a power reactor, test reactor or research reactor issued under part 50 of this chapter and to any person holding a combined license issued under part 52 of this chapter that authorizes operation of a power reactor. The regulations in this part also apply to any person holding a materials license as defined in this part, a Certificate of Compliance, a sealed source or device registration, a quality assurance program approval, and to a Government agency as defined in this part. Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium enrichment facilities until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license, as required in 10 CFR parts 40 and 70.

■ 9. Section 171.15 is revised to read as follows:

### § 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

(a) Each person holding an operating license for a power, test, or research reactor; each person holding a 10 CFR part 50 or part 52 power reactor license that is in decommissioning or possession only status, except those that have no spent fuel onsite; and each person holding a 10 CFR part 72 license who does not hold a 10 CFR part 50 or part 52 license shall pay the annual fee for each license held at any time during the Federal fiscal year (FY) in which the fee is due. This paragraph does not apply to test and research reactors exempted under § 171.11(a).

(b)(1) The FY 2007 annual fee for each operating power reactor which must be collected by September 30, 2007, is $4,043,000.

(2) The FY 2007 annual fee is comprised of a base annual fee for

power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 2007 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2007 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2007 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors, except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors (e.g., updating part 50 or 52 of this chapter, operating the Incident Response Center, new reactor regulatory infrastructure). The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2007 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession only status and has spent fuel onsite, and each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is $159,000.

(2) The FY 2007 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 2007 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 2007 spent fuel storage/reactor decommissioning rebaselined annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The surcharge allocated to annual fees includes the budgeted resources for the activities listed in paragraph (d)(1)(i) of this section, plus the total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, a negative surcharge (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2007 surcharge are as follows:

(i) Low-level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program); and

(iii) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (e.g., reviews and inspections conducted of nonprofit educational institutions, costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, regulatory support for Agreement States, generic decommissioning/reclamation activities for fee classes other than power reactors and spent fuel storage/reactor decommissioning, the in-situ leach rulemaking, activities for unregistered general licensees).

(2) The total FY 2007 surcharge allocated to the operating power reactor class of licenses is −$6.0 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2007 operating power reactor surcharge to be assessed to each operating power reactor is approximately −$57,000. This amount is calculated by dividing the total operating power reactor surcharge (−$6.0 million) by the number of operating power reactors (104).

(3) The FY 2007 surcharge allocated to the spent fuel storage/reactor decommissioning class of licenses is −$350,000. The FY 2007 spent fuel storage/reactor decommissioning surcharge to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is approximately −$2,800. This amount is calculated by dividing the total surcharge costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2007 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

| | |
|---|---|
| Research reactor | $76,300 |
| Test reactor | 76,300 |

■ 10. In § 171.16, paragraph (a)(2) is redesignated as paragraph (a)(3) and revised, a new paragraph (a)(2) is added, paragraphs (c) and (d) are revised, and paragraph (e) is added to read as follows:

**§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.**

(a) * * *

(2) Notwithstanding the other provisions in this section, the regulations in this part do not apply to uranium enrichment facilities until after the Commission verifies through inspection that the facility has been constructed in accordance with the requirements of the license, as required in 10 CFR parts 40 and 70.

(3) In accordance with § 171.17, each person identified in paragraph (a)(1) of this section shall pay the applicable annual fee for each license the person holds during the FY. Annual fees will be prorated for new licenses issued and for licenses for which termination is requested and activities permanently ceased during the FY as provided in § 171.17. If a single license authorizes more than one activity (e.g., human use and irradiator activities), annual fees will be assessed for each fee category applicable to the license. If a person holds more than one license, the total annual fee assessed will be the cumulative total of the annual fees applicable to each license held.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

| | Maximum annual fee per licensed category |
|---|---|
| *Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):* | |
| $350,000 to $5 million | $2,300 |
| Less than $350,000 | 500 |
| *Manufacturing entities that have an average of 500 employees or less:* | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |
| *Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population)*: | |
| 20,000 to 50,000 | 2,300 |
| Less than 20,000 | 500 |
| *Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less*: | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. NRC Form 526 can be accessed through the NRC's Web site at *http://www.nrc.gov*. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. The form can also be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov*.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2007 annual fees are comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 2007 surcharge are shown for convenience in paragraph (e) of this section. The FY 2007 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1 2 3] |
|---|---|
| 1. Special nuclear material: | |
| A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities. | |
| (a) Strategic Special Nuclear Material (High Enriched Uranium) | $4,096,000 |
| (b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel | 1,237,000 |
| (2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities. | |
| (a) Facilities with limited operations | 469,000 |
| (b) Gas centrifuge enrichment demonstration facilities | 768,000 |
| (c) Others, including hot cell facilities | 341,000 |
| B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) | [11] N/A |
| C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers | 2,100 |
| D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) | 5,800 |
| E. Licenses or certificates for the operation of a uranium enrichment facility | 2,347,000 |
| 2. Source material: | |
| A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride | 811,000 |
| (2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode. | |
| (a) Class I facilities [4] | 18,700 |
| (b) Class II facilities [4] | 18,700 |
| (c) Other facilities [4] | 90,200 |
| (3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) | [5] N/A |
| (4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2) | 18,700 |
| (5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water | 11,200 |

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1 2 3] |
|---|---|
| B. Licenses that authorize only the possession, use and/or installation of source material for shielding | 750 |
| C. All other source material licenses | 13,400 |
| 3. Byproduct material: | |
| A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution | 29,100 |
| B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution | 8,400 |
| C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). These licenses are covered by fee under Category 3.D | 11,900 |
| D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license | 6,800 |
| E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) | 4,200 |
| F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes | 7,800 |
| G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes | 31,200 |
| H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter | 11,400 |
| I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter | 10,700 |
| J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter | 2,500 |
| K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter | 1,900 |
| L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution | 15,100 |
| M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution | 5,600 |
| N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C | 8,500 |
| O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license | 14,100 |
| P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D | 2,700 |
| Q. Registration of devices generally licensed under part 31 of this chapter | [13] N/A |
| 4. Waste disposal and processing: | |
| A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material | [5] N/A |
| B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material | 12,000 |
| C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material | 9,200 |
| 5. Well logging: | |
| A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies | 4,400 |

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

| Category of materials licenses | Annual fees [1] [2] [3] |
|---|---|
| B. Licenses for possession and use of byproduct material for field flooding tracer studies | [5] N/A |
| 6. Nuclear laundries: | |
| A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material | 26,800 |
| 7. Medical licenses: | |
| A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license | 13,700 |
| B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9] | 29,000 |
| C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9] | 4,900 |
| 8. Civil defense: | |
| A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities | 2,100 |
| 9. Device, product, or sealed source safety evaluation: | |
| A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution | 19,400 |
| B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices | 19,400 |
| C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution | 2,700 |
| D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel | 900 |
| 10. Transportation of radioactive material: | |
| A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers. | |
| 1. Spent Fuel, High-Level Waste, and plutonium air packages | [6] N/A |
| 2. Other Casks | [6] N/A |
| B. Quality assurance program approvals issued under part 71 of this chapter. | |
| 1. Users and Fabricators | [6] N/A |
| 2. Users | [6] N/A |
| C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices) | [6] N/A |
| 11. Standardized spent fuel facilities | [6] N/A |
| 12. Special Projects | [6] N/A |
| 13. A. Spent fuel storage cask Certificate of Compliance | [6] N/A |
| B. General licenses for storage of spent fuel under 10 CFR 72.210 | [12] N/A |
| 14. Decommissioning/Reclamation: | |
| A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter | [7] N/A |
| B. Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed | [7] N/A |
| 15. Import and Export licenses | [8] N/A |
| 16. Reciprocity | [8] N/A |
| 17. Master materials licenses of broad scope issued to Government agencies | 282,000 |
| 18. Department of Energy: | |
| A. Certificates of Compliance | [10] 976,000 |
| B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities | 584,000 |

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2006, and permanently ceased licensed activities entirely by September 30, 2006. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An ''other'' license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

[11] See § 171.15(c).

[12] See § 171.15(c).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

(e) The surcharge allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, a negative surcharge (or annual fee reduction) will be allocated to annual fees. The activities comprising the FY 2007 surcharge are as follows:

(1) Low-level waste disposal generic activities;

(2) Activities not attributable to an existing NRC licensee or class of licenses (e.g., international cooperative safety program and international safeguards activities, support for the Agreement State program); and

(3) Activities not currently subject to 10 CFR part 170 licensing and inspection fees based on existing law or Commission policy (e.g., reviews and inspections conducted of nonprofit educational institutions, costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., regulatory support for Agreement States, generic decommissioning/reclamation activities for fee classes other than power reactors and spent fuel storage/reactor decommissioning, the *in-situ* leach rulemaking, and activities for unregistered general licensees).

■ 11. Section 171.17 is revised to read as follows:

**§ 171.17 Proration.**

Annual fees will be prorated for NRC licensees as follows:

(a) Reactors, 10 CFR part 72 licensees who do not hold 10 CFR part 50 licenses, and materials licenses with annual fees of $100,000 or greater for a single fee category.

(1) *New licenses.* The annual fees for new licenses for power reactors, non-power reactors, 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license, and materials licenses with annual fees of $100,000 or greater for a single fee category for the current FY, that are subject to fees under this part and are granted a license to operate on or after October 1 of a FY, are prorated on the basis of the number of days remaining in the FY. Thereafter, the full annual fee is due and payable each subsequent FY.

(2) *Terminations.* The base operating power reactor annual fee for operating reactor licensees who have requested amendment to withdraw operating authority permanently during the FY will be prorated based on the number of days during the FY the license was in effect before docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel or when a final legally effective order to permanently cease operations has come into effect. The spent fuel storage/reactor decommissioning annual fee for reactor licensees who permanently cease operations and have permanently removed fuel from the site during the FY will be prorated on the basis of the number of days remaining in the FY after docketing of both the certifications of permanent cessation of operations and permanent removal of fuel from the site. The spent fuel storage/reactor decommissioning annual fee will be prorated for those 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license who request termination of the 10 CFR part 72 license and permanently cease activities authorized by the license during the FY based on the number of days the license was in effect before receipt of the termination request. The annual fee for materials licenses with annual fees of $100,000 or greater for a single fee category for the current FY will be prorated based on the number of days remaining in the FY when a termination request or a request for a POL is received by the NRC, provided the licensee permanently ceased licensed activities during the specified period.

(3) *Downgraded licenses.* The annual fee for a materials license with an annual fee of $100,000 or greater for a single fee category for the current FY, that is subject to fees under this part and downgraded on or after October 1 of a FY, is prorated upon request by the licensee on the basis of the number of days remaining in the FY when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(b) Materials licenses (excluding 10 CFR part 72 licenses and materials license with annual fees of $100,000 or greater for a single fee category, included in § 171.17(a)).

(1) *New licenses.* The annual fee for a materials license that is subject to fees under this part and issued on or after October 1 of the FY is prorated on the basis of when the NRC issues the new license. New licenses issued during the period October 1 through March 31 of the FY will be assessed one-half the annual fee for that FY. New licenses issued on or after April 1 of the FY will not be assessed an annual fee for that FY. Thereafter, the full fee is due and payable each subsequent FY.

(2) *Terminations.* The annual fee will be prorated for licenses for which a termination request or a request for a POL has been received on or after October 1 of a FY on the basis of when the application for termination or POL is received by the NRC provided the licensee permanently ceased licensed activities during the specified period. Licenses for which applications for termination or POL are filed during the period October 1 through March 31 of the FY are assessed one-half the annual fee for the applicable category(ies) for that FY. Licenses for which applications for termination or POL are filed on or

after April 1 of the FY are assessed the full annual fee for that FY. Materials licenses transferred to a new Agreement State during the FY are considered terminated by the NRC, for annual fee purposes, on the date that the Agreement with the State becomes effective; therefore, the same proration provisions will apply as if the licenses were terminated.

(3) *Downgraded licenses.* (i) The annual fee for a materials license that is subject to fees under this part and downgraded on or after October 1 of a FY is prorated upon request by the licensee on the basis of when the application for downgrade is received by the NRC provided the licensee permanently ceased the stated activities during the specified period. Requests for proration must be filed with the NRC within 90 days from the effective date of the final rule establishing the annual fees for which a proration is sought. Absent extraordinary circumstances, any request for proration of the annual fee for a downgraded license filed beyond that date will not be considered.

(ii) Annual fees for licenses for which applications to downgrade are filed during the period October 1 through March 31 of the FY will be prorated as follows:

(A) Licenses for which applications have been filed to reduce the scope of the license from a higher fee category(ies) to a lower fee category(ies) will be assessed one-half the annual fee for the higher fee category and one-half the annual fee for the lower fee category(ies), and, if applicable, the full annual fee for fee categories not affected by the downgrade; and

(B) Licenses with multiple fee categories for which applications have been filed to downgrade by deleting a fee category will be assessed one-half the annual fee for the fee category being deleted and the full annual fee for the remaining categories.

(iii) Licenses for which applications to downgrade are filed on or after April 1 of the FY are assessed the full fee for that FY.

■ 12. In § 171.19 paragraph (d) is revised to read as follows:

**§ 171.19 Payment.**

* * * * *

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1.C., 1.D., 2.A.(2) through 2.A.(5), 2.B., 2.C., and 3.A. through 9.D.

* * * * *

Dated at Rockville, Maryland, this 17th day of May, 2007.

For the Nuclear Regulatory Commission.

**Peter J. Rabideau,**

*Acting Chief Financial Officer.*

**Note:** This Appendix will not appear in the Code of Federal Regulations.

## Appendix A to this final Rule—Regulatory Flexibility Analysis for the final amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual fees )

### I. Background

The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 *et seq.*), requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.810). These size standards were established based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this final rule are based on the NRC's size standards.

The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. The total amount NRC is required to recover in fees for FY 2007 is approximately $670.5 million.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given FY.

The Commission is rebaselining its part 171 annual fees in FY 2007. Rebaselining fees results in increased annual fees compared to FY 2006 for two classes of licenses (power reactors and non-power reactors), and decreased annual fees for five classes of licenses (spent fuel storage/reactor decommissioning, fuel facilities, uranium recovery, rare earth, and transportation). For the materials users fee class, annual fees decrease for most of the categories (subclasses) of licenses, while annual fees for some categories increase or remain the same.

The Congressional Review Act of 1996 provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective.

The Congressional Review Act also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. This analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2007 fee rule as required by law.

### II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the fees on materials licensees. In FY 2006, about 31 percent of these licensees (approximately 1,300 licensees) qualified as small entities.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would

significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over 3,000 license, approval, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the license (e.g., number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (e.g., volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

**III. Maximum Fee**

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result, the maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities was reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with less than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC stated in the RFA for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officer's Act. Accordingly, the NRC examined the small entity fees again in FY 2003 (68 FR 36714; June 18, 2003), and determined that a change was not warranted to the small entity fees established in FY 2003. The NRC performed a similar review, and reached the same conclusion, in FY 2005.

The NRC has again re-examined its small entity fees for the FY 2007 fee rulemaking, and does not believe that a change to the small entity fees is warranted. Unlike the annual fees assessed to other licensees, the small entity fees are not designed to recover all of the agency costs associated with particular licensees. Instead, the reduced fees for small entities are designed to provide some fee relief for qualifying small entity licensees while at the same time recovering from them some of the agency's costs for activities that benefit them. The costs not recovered from small entities for activities that benefit them must be recovered from other licensees. Given the reduction in annual fees from FY 2000 to FY 2007, on average, for those categories of materials licensees that contain a number of small entities, the NRC has determined that the current small entity fees of $500 and $2,300 continue to meet the objective of providing relief to many small entities while recovering from them some of the costs that benefit them.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC recently received one comment requesting that such small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (i.e., they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities under part 170, in addition to the part 171 small entity fee reduction. Regarding export licenses, in particular, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC's fees are charged per application, this streamlining process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities.

Therefore, the NRC is retaining the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2007. The NRC is not establishing a small entity fee under part 170. The NRC plans to re-examine the small entity fees again in FY 2009.

**IV. Summary**

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions

with a population of less than 20,000, small manufacturing entities that have less than 35 employees, and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA. Therefore, the analysis and conclusions previously established remain valid for FY 2007.

**ATTACHMENT 1 TO APPENDIX A—U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 2007**

**Contents**



**Introduction**

The Congressional Review Act requires all Federal agencies to prepare a written guide for each ''major'' final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under the Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2007 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2007 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity (listed in 10 CFR 2.810) must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed Under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''Who We Are'', then ''License Fees'' and under ''Forms'' selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

**NRC Definition of Small Entity**

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average gross receipts of $5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of less than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) *A small business concern* is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) *The number of employees* means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (i.e., not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) *Gross annual receipts* includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (i.e., not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

**NRC Small Entity Fees**

In 10 CFR 171.16 (c), the NRC has established two tiers of fees for licensees that qualify as a small entity under the NRC's size standards. The fees are as follows:

| | Maximum annual fee per licensed category |
|---|---|
| *Small business not engaged in manufacturing and small not-for-profit organizations (Gross Annual Receipts):* | |
| $350,000 to $5 million | $2,300 |
| Less than $350,000 | 500 |
| *Manufacturing entities that have an average of 500 employees or less:* | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |
| *Small Governmental Jurisdictions (Including publicly supported educational institutions) (population):* | |
| 20,000 to 50,000 | 2,300 |
| Less than 20,000 | 500 |
| *Educational institutions that are not State or publicly supported, and have 500 Employees or less:* | |
| 35 to 500 employees | 2,300 |
| Less than 35 employees | 500 |

**Instructions for Completing NRC Small Entity Form 526**

1. Complete all items on NRC Form 526 as follows: (NOTE: Incomplete or improperly completed forms will be returned as unacceptable).

- Enter the license number and invoice number exactly as they appear on the annual fee invoice.
- Enter the North American Industry Classification System (NAICS) code if it is known. If it is not known, leave this item blank.
- Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for billing purposes on the payment copy of the

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

invoice—include contact's name, telephone number, e-mail address, and company web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.

• Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

a. A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business (67 CFR part 59).

b. Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources, regardless of the form of the revenue and not solely receipts from licensed activities.

c. NRC's size standards on small entity are based on the Small Business Administration's regulations (13 CFR part 121).

d. The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

2. If the invoice states the ''Amount Billed Represents 50% Proration,'' the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either $1,150 or $250) for each category billed.

3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee payment and the ''Payment Copy'' of the invoice to the address shown on the invoice.

5. 10 CFR 171.16(c)(3) states licensees shall submit a new certification with its annual fee payment each year. Failure to submit NRC Form 526 at the time the annual fee is paid will require the licensee to pay the full amount of the invoice.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $2,300 or $500 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year, and licensees who file for termination or for a ''possession only'' license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the ''amount billed represents 50% proration.''

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return NRC Form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees@nrc.gov,* or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. E7–10468 Filed 6–5–07; 8:45 am]

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**H.R. 414/P.L. 110–29**

To designate the facility of the United States Postal Service located at 60 Calle McKinley, West in Mayaguez, Puerto Rico, as the ''Miguel Angel García Méndez Post Office Building''. (June 1, 2007; 121 Stat. 219)

**H.R. 437/P.L. 110–30**

To designate the facility of the United States Postal Service located at 500 West Eisenhower Street in Rio Grande City, Texas, as the ''Lino Perez, Jr. Post Office''. (June 1, 2007; 121 Stat. 220)

**H.R. 625/P.L. 110–31**

To designate the facility of the United States Postal Service located at 4230 Maine Avenue in Baldwin Park, California, as the ''Atanacio Haro-Marin Post Office''. (June 1, 2007; 121 Stat. 221)

**H.R. 1402/P.L. 110–32**

To designate the facility of the United States Postal Service located at 320 South Lecanto Highway in Lecanto, Florida, as the ''Sergeant Dennis J. Flanagan Lecanto Post Office Building''. (June 1, 2007; 121 Stat. 222)

**H.R. 2080/P.L. 110–33**

To amend the District of Columbia Home Rule Act to conform the District charter to revisions made by the Council of the District of Columbia relating to public education. (June 1, 2007; 121 Stat. 223)

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